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PART - VI

Acts of Parliament and Ordinances Promulgated by the President
LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT
Sachivalaya, Gandhinagar, 28th January, 2002.

No. RPB/1/2002/Act-4501/234/ /E.-The following Act of Parliament is republished for general information:-

GOVERNMENT OF INDIA
MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS.
(Legislative Department)

New Delhi the 14th September, 2001/Bhadra 23, 1923 (Saka)

The following Act of Parliament received the assent of the President on the 14th September, 2001 and is hereby published for general information:-

THE ADVOCATES' WELFARE FUND ACT, 2001.

AN ACT

(Act No. 45 of 2001)

(14th September, 2001)

to provide for the constitution of a welfare fund for the benefit of advocates and for matters connected therewith or incidental thereto.

Enacted by Parliament in the Fifty-second Year of the Republic of India as follows:-

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Advocates' Welfare Fund Act, 2001.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification, appoint; and different dates may be appointed for different provisions of this Act and for different States, and any reference in any such provision to the commencement of this Act shall be construed in relation to any State as a reference to the coming into force of that provision in that State.

2. In this Act, unless the context otherwise requires,--

(a) "advocate" means an advocate whose name has been entered in the State roll prepared and maintained by a State Bar Council under section 17 of the Advocates Act, 1961 and who is a member of a State Bar Association or State Advocates' Association;

Short title, extent and commencement

Definitions

(b) "appropriate Government" means,—

(i) in the case of advocates admitted on the roll of a Bar Council of a State, the State Government;

(ii) in the case of advocates admitted on the roll of a Bar Council of a Union territory, the Central Government;

(c) "cessation of practice" means removal of the name of an advocate from the State roll under section 26A of the Advocates Act, 1961;

25 of 1961.

(d) "Chairperson" means the Chairperson of the Trustee Committee referred to in clause (a) of sub-section (3) of section 4;

(e) "chartered accountant" means a chartered accountant as defined in clause (b) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949 and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;

38 of 1949

(f) "dependants" means the spouse, parents or minor children of a member of the Fund;

(g) "Fund" means the Advocates' Welfare Fund constituted under sub-section (1) of section 3;

(h) "insurer" shall have the meaning assigned to it in clause (9) of section 2 of the Insurance Act, 1938;

4 of 1938.

(i) "member of the Fund" means an advocate admitted to the benefits of the Fund and who continues to be a member thereof under the provisions of this Act;

(j) "notification" means a notification published in the Official Gazette of the appropriate Government and the expression "notified" shall be construed accordingly;

(k) "prescribed" means prescribed by rules made under this Act;

(l) "Schedule" means a Schedule to this Act;

(m) "scheduled bank" shall have the meaning assigned to it in clause (e) of section 2 of the Reserve Bank of India Act, 1934;

2 of 1934

(n) "stamp" means the Advocates' Welfare Fund Stamp printed and distributed under section 26;

(o) "State" means a State specified in the First Schedule to the Constitution and shall include a Union territory;

(p) "State Advocates' Association" means an association of advocates in a State recognised by the Bar Council of that State under section 16;

(q) "State Bar Association" means an association of advocates recognised by the Bar Council of that State under section 16;

(r) "State Bar Council" means a Bar Council referred to in section 3 of the Advocates Act, 1961;

25 of 1961.

(s) "suspension of practice" means voluntary suspension of practice as an advocate or suspension of an advocate by a State Bar Council for misconduct;

(t) "Trustee Committee" means the Advocates' Welfare Fund Trustee Committee established under sub-section (1) of section 4;

(u) "Vakalatnama" includes memorandum of appearance or any other document by which an advocate is empowered to appear or plead before any court, tribunal or other authority;

(v) words and expressions used and not defined in this Act but defined in the Advocates Act, 1961 shall have the meanings respectively assigned to them in that Act.

25 of 1961.

CHAPTER II

CONSTITUTION OF ADVOCATES' WELFARE FUND

3. (1) The appropriate Government shall constitute a fund to be called the "Advocates' Welfare Fund".

Advocates' Welfare Fund.

(2) There shall be credited to the Fund—

- (a) all amounts paid by a State Bar Council under section 15;
- (b) any other contribution made by a State Bar Council;
- (c) any voluntary donation or contribution made to the Fund by the Bar Council of India, any State Bar Association, any State Advocates' Association or other association or institution, or any advocate or other person;
- (d) any grant which may be made by the Central Government or a State Government to the Fund after due appropriation made in this behalf;
- (e) any sums borrowed under section 12;
- (f) all sums collected under section 18;
- (g) all sums received from the Life Insurance Corporation of India or any other insurer on the death of any member of the Fund under any Group Insurance Policy;
- (h) any profit or dividend or refund received from the Life Insurance Corporation of India or any other insurer in respect of policies of Group Insurance of the members of the Fund;
- (i) any interest or dividend or other return on any investment made out of any part of the Fund;
- (j) all sums collected by way of sale of stamps under section 26.

(3) The sums specified in sub-section (2) shall be paid to, or collected by, such agencies, at such intervals and in such manner, as may be prescribed.

CHAPTER III

ESTABLISHMENT OF TRUSTEE COMMITTEE

4. (1) With effect from such date as the appropriate Government may, by notification, appoint in this behalf, there shall be established a Trustee Committee to be called the "Advocates' Welfare Fund Trustee Committee".

Establishment of Trustee Committee.

(2) The Trustee Committee shall be a body corporate having perpetual succession and a common seal with power to acquire, hold and dispose of property and shall, by the said name, sue and be sued.

(3) The Trustee Committee shall consist of—

- (a) the Advocate-General of a State - Chairperson, *ex officio*;

Provided that where there is no Advocate-General of a State, the appropriate Government shall nominate a senior advocate to be the Chairperson;

- (b) the Secretary to the appropriate Government in its Law Department or Ministry - Member, *ex officio*;
- (c) the Secretary to the appropriate Government in its Home Department or Ministry - Member, *ex officio*;
- (d) the Chairman of the State Bar Council - Member, *ex officio*;
- (e) the Government Pleader or the Public Prosecutor, as may be nominated by the appropriate Government - Member;
- (f) two advocates to be nominated by the State Bar Council - Members;
- (g) the Secretary of the State Bar Council - Secretary, *ex officio*.

(4) The Chairperson nominated under the proviso to clause (a) of sub-section (3) shall hold office for a period not exceeding three years from the date on which he enters upon his office.

(5) Every Member of the Trustee Committee nominated under clause (e) or clause (f) of sub-section (3) shall hold office for a period not exceeding three years from the date on which he enters upon his office.

Disqualifications
and removal of
Chairperson or
Member of
Trustee Com-
mittee.

5. (1) The appropriate Government shall remove from office the Chairperson or any Member of the Trustee Committee, who—

(a) is, or at any time has been, adjudged as an insolvent; or

(b) has become physically or mentally incapable of acting as the Chairperson or a Member of the Trustee Committee; or

(c) has been convicted of an offence which, in the opinion of the appropriate Government, involves moral turpitude; or

(d) has acquired such financial or other interest as is likely to affect prejudicially his functions as the Chairperson or a Member of the Trustee Committee; or

(e) has so abused his position as to render his continuation in office detrimental to the public interest; or

(f) is, or at any time has been, absent without leave of the Trustee Committee for more than three consecutive meetings of the Trustee Committee:

Provided that the Trustee Committee may, on sufficient ground, condone the absence of such Chairperson or Member.

(2) No such Chairperson or Member of the Trustee Committee shall be removed under clause (d) or clause (e) of sub-section (1) unless he has been given a reasonable opportunity of being heard.

Resignation by
nominated
Chairperson and
Members of
Trustee
Committee and
filling up of
casual vacancy.

6. (1) The Chairperson referred to in sub-section (4) of section 4 or a Member nominated under clause (e) of sub-section (3) of that section may resign his office by giving three months' notice in writing to the appropriate Government and on such resignation being accepted by the appropriate Government such Chairperson or Member shall vacate his office.

(2) A Member nominated under clause (f) of sub-section (3) of section 4 may resign his office by giving three months' notice in writing to the State Bar Council and on such resignation being accepted by the State Bar Council such Member shall vacate his office.

(3) A casual vacancy in the office of the Chairperson or a Member referred to in sub-section (1) who has resigned may be filled up, as soon as may be, by the appropriate Government and the Chairperson or a Member so nominated shall hold office only so long as the Chairperson or the Member in whose place he is nominated would have been entitled to hold office if the vacancy did not occur.

(4) A casual vacancy in the office of a Member referred to in sub-section (2) who has resigned may be filled up, as soon as may be, by the State Bar Council and a Member so nominated shall hold office only so long as the Member in whose place he is nominated would have been entitled to hold office if the vacancy did not occur.

Vacancies, etc.,
not to invalidate
proceedings of
Trustee Commit-
tee.

7. No act or proceeding of the Trustee Committee shall be invalid merely by reason of—

(a) any vacancy in, or any defect in the constitution of, the Trustee Committee;

or

(b) any defect or irregularity in the nomination of a person acting as the Chairperson or a Member of the Trustee Committee; or

(c) any irregularity in the procedure of the Trustee Committee not affecting the merits of the case.

8. (1) The Trustee Committee shall meet at least once in every three calendar months and at least four such meetings shall be held in every year to transact business under this Act and the rules made thereunder.

Meetings of
Trustee
Committee.

(2) Three Members of the Trustee Committee shall form the quorum for a meeting of the Trustee Committee.

(3) The Chairperson of the Trustee Committee or, if for any reason, he is unable to attend a meeting of the Trustee Committee, any other Member chosen by the Members of the Trustee Committee present from amongst themselves at the meeting shall preside at the meeting.

(4) All questions which come up in a meeting of the Trustee Committee shall be decided by a majority vote of the Members of the Trustee Committee present and voting, and, in the event of an equality of votes, the Chairperson, or in his absence, the Member of the Trustee Committee presiding, shall have a second or casting vote.

9. The Chairperson referred to in sub-section (4) of section 4 and Members of the Trustee Committee referred to in clauses (e) and (f) of sub-section (3) of that section shall be entitled to be paid such travelling and daily allowances as are admissible to the members of the State Bar Council.

Travelling and
daily allowances
to nominated
Chairperson and
Members of
Trustee Commit-
tee.

10. The Fund shall vest in, and be held and applied by, the Trustee Committee subject to the provisions, and for the purposes, of this Act.

Vesting and
application of
Fund.

11. (1) Subject to the provisions of this Act and any other law for the time being in force, the Trustee Committee shall administer the Fund.

Functions of
Trustee
Committee.

(2) Without prejudice to the generality of the provisions contained in sub-section (1), the Trustee Committee shall—

(a) hold the amounts and assets belonging to the Fund in trust;

(b) receive applications for admission or re-admission as members to the Fund, and dispose of such applications within ninety days from the date of receipt thereof;

(c) receive applications from the members of the Fund, their nominees or legal heirs, as the case may be, for payment out of the Fund, conduct such enquiry as it deems necessary and dispose of the applications within five months from the date of receipt thereof;

(d) record in the minutes book of the Trustee Committee, its decisions on the applications;

(e) pay to the members of the Fund or their nominees or legal heirs, as the case may be, the amounts at the rates specified in Schedule I;

(f) send such periodical and annual reports as may be prescribed, to the appropriate Government and the State Bar Council;

(g) communicate to the applicants, by registered post with acknowledgment due or through electronic mode, the decisions of the Trustee Committee in respect of applications for admission or re-admission as members to the Fund or claims to the benefit of the Fund;

(h) do such other acts as are, or may be, required to be done under this Act and the rules made thereunder.

12. (1) The Trustee Committee may, with the prior approval of the appropriate Government and the State Bar Council, borrow, from time to time, any sum required for carrying out the purposes of this Act.

Borrowing and
investment.

(2) The Trustee Committee shall deposit all monies and receipts forming part of the Fund in any scheduled bank or invest the same in debt instruments of any corporation owned or controlled by the appropriate Government or in loans floated by the appropriate Government or in any other manner as the State Bar Council may, from time to time, direct with the prior approval of the appropriate Government.

Accounts and
audit.

(3) All amounts due and payable under this Act and all expenditure relating to the management and administration of the Fund shall be paid out of the Fund.

13. (1) The Trustee Committee shall maintain proper accounts and other relevant records and prepare an annual statement of accounts and annual report in such form and in such manner as may be prescribed.

(2) The accounts of the Trustee Committee shall be audited annually by a chartered accountant appointed by the State Bar Council.

(3) The accounts of the Trustee Committee as audited by the chartered accountant together with his audit report shall be forwarded to the State Bar Council by that Committee and the State Bar Council may issue such directions, as it deems fit, to the Trustee Committee in respect thereof.

(4) The Trustee Committee shall comply with the directions issued by the State Bar Council under sub-section (3).

(5) The Trustee Committee shall pay from the Fund the charges for the audit as may be fixed by the State Bar Council.

Powers and duties
of Secretary.

14. The Secretary of the Trustee Committee shall—

(a) be the chief executive authority of the Trustee Committee and responsible for carrying out its decisions;

(b) represent the Trustee Committee in all suits and proceedings for and against the Trustee Committee;

(c) authenticate by his signature all decisions and instruments of the Trustee Committee;

(d) operate bank account of the Trustee Committee jointly with the Chairperson;

(e) convene meetings of the Trustee Committee and prepare minutes of such meetings;

(f) attend meetings of the Trustee Committee with all the necessary records and information;

(g) maintain such forms, registers and other records as may be prescribed from time to time and do all correspondence relating to the Trustee Committee;

(h) prepare an annual statement of business transacted by the Trustee Committee during a financial year;

(i) do such other acts as are or may be directed by the Trustee Committee and the State Bar Council.

Payment of
certain monies
to Fund by State
Bar Council.

15. The State Bar Council shall pay to the Fund annually an amount equal to twenty per cent. of the enrolment fee received by it under clause (f) of section 24 of the Advocates Act, 1961.

25 of 1961.

CHAPTER IV

RECOGNITION OF ANY ASSOCIATION OF ADVOCATES

Recognition by a
State Bar Council
of any
association of
advocates.

16. (1) Any association of advocates known by any name which is registered as an association before the date of commencement of this Act may, before the date to be notified by a State Bar Council in this behalf, apply for recognition to the State Bar Council in such form as may be prescribed.

(2) Any association of advocates known by any name which is registered as an association on or after the date of commencement of this Act may, within three months from the date of its registration as an association, apply for recognition to the State Bar Council in such form as may be prescribed.

(3) Every application for recognition under sub-section (1) or sub-section (2) shall be accompanied by,—

(a) a copy of the rules or bye-laws of the association;

(b) names and addresses of office bearers of the association;

(c) a list of members of the association containing the name, address, age, enrolment number and date of enrolment with the State Bar Council and the ordinary place of practice of each member.

(4) The State Bar Council may, after such enquiry as it deems necessary, recognise the association and issue a certificate of recognition in such form as may be prescribed.

(5) The decision of the State Bar Council on any matter regarding recognition of an association under sub-section (4) shall be final.

21 of 1860.

Explanation.—In this section, “registered” means registered or deemed to be registered under the Societies Registration Act, 1860 or any other law for the time being in force.

17. (1) Every State Bar Association and State Advocates’ Association shall, on or before the 15th day of April of every year, furnish to the State Bar Council a list of its members as on the 31st day of March of that year.

Duties of State Bar Associations and State Advocates’ Associations.

(2) Every State Bar Association and State Advocates’ Association shall inform the State Bar Council of—

(a) any change in the membership including admissions and re-admissions within thirty days of such change;

(b) the death or other cessation of practice or voluntary suspension of practice of any of its members within thirty days from the date of occurrence thereof;

(c) such other matters as may be required by the State Bar Council from time to time.

CHAPTER V

MEMBERSHIP AND PAYMENT OUT OF ADVOCATES’ WELFARE FUND

18. (1) Every advocate practising, before the commencement of this Act, in any court, tribunal or other authority in a State and being a member of a State Bar Association or a State Advocates’ Association in that State, shall apply, within six months of the commencement of this Act, to the Trustee Committee for admission as a member of the Fund, in such form as may be prescribed.

Membership in Fund.

(2) Every person,—

(a) admitted as an advocate on the roll of a State Bar Council, after the commencement of this Act;

(b) practising in any court, tribunal or other authority in a State and being a member of a State Bar Association or a State Advocates’ Association in that State,— shall apply, within six months of his enrolment as an advocate, to the Trustee Committee, for admission as a member of the Fund in such form as may be prescribed.

(3) On receipt of an application under sub-section (1) or sub-section (2), the Trustee Committee shall make such enquiry as it deems fit and either admit the applicant to the Fund or, for reasons to be recorded in writing, reject the application:

Provided that no order rejecting an application shall be passed unless the applicant has been given an opportunity of being heard.

(4) Every applicant shall pay an application fee of two hundred rupees along with the application to the account of the Trustee Committee.

(5) Every advocate, being a member of the Fund, shall pay an annual subscription of fifty rupees to the Fund on or before the 31st day of March of every year:

Provided that every advocate, who makes an application under sub-section (1) or sub-section (2), shall pay his first annual subscription within three months of his becoming a member of the Fund:

Provided further that a senior advocate shall pay an annual subscription of one thousand rupees.

(6) Any member of the Fund, who fails to pay the annual subscription for any year before the 31st day of March of that year, shall be liable to be removed from the membership in the Fund.

(7) A member of the Fund removed from the membership in the Fund under sub-section (6) may be re-admitted to the Fund, on payment of arrears along with re-admission fee of ten rupees, within six months from the date of such removal.

(8) Every member of the Fund shall, at the time of admission to the membership in the Fund, make nomination conferring on one or more of his dependants the right to receive, in the event of his death, any amount payable to the member under this Act.

(9) If a member of the Fund nominates more than one person under sub-section (8), he shall specify in the nomination, the amount or share payable to each of the nominees.

(10) A member of the Fund may, at any time, cancel a nomination by sending a notice in writing to the Trustee Committee.

(11) Every member of the Fund, who cancels his nomination under sub-section (10), shall make a fresh nomination along with registration fee of five rupees.

(12) Every member of the Fund, whose name has been removed from the State roll under section 26A of the Advocates Act, 1961, or who voluntarily suspends practice, shall, within fifteen days of such removal or suspension, intimate such removal or suspension to the Trustee Committee and if any member of the Fund fails to do so without sufficient reason, the Trustee Committee may reduce, in accordance with such principles as may be prescribed, the amount payable to that member under this Act.

25 of 1961.

Ex gratia grant to a member of Fund.

19. The Trustee Committee on an application made to it by a member of the Fund, and after being satisfied about the genuineness of the claim, may allow *ex gratia* grant to such member from the Fund—

(a) in the case of his hospitalisation or involving major surgical operation; or

(b) if he is suffering from tuberculosis, leprosy, paralysis, cancer, unsoundness of mind or from such other serious disease or disability.

Review.

20. The Trustee Committee may, on its own motion or on an application received from any person interested, within ninety days of the passing of any order by it under the provisions of this Act, review such order, if it was passed under any mistake, whether of fact or of law or in ignorance of any material fact:

Provided that the Trustee Committee shall not pass any order under this section adversely affecting any person unless such person has been given an opportunity of being heard.

Payment of amount on cessation of practice.

21. (1) Every advocate who has been a member of the Fund for a period of not less than five years shall, on his cessation of practice, be paid an amount at the rate specified in Schedule I:

Provided that where the Trustee Committee is satisfied that a member of the Fund ceases to practice within a period of five years from the date of his admission as a member of such Fund as a result of any permanent disability, the Trustee Committee may pay such member an amount at the rate specified in Schedule I.

(2) Where a member of the Fund dies before receiving the amount payable under sub-section (1), his nominee or legal heir, as the case may be, shall be paid the amount payable to the deceased member of the Fund.

Restriction on alienation, attachment, etc., of interest of member in Fund.

22. (1) The interest of any member in the Fund, or the right of a member of the Fund or his nominee or legal heir to receive any amount from the Fund, shall not be assigned, alienated, or charged and shall not be liable to attachment under any decree or order of any court, tribunal or other authority.

(2) No creditor shall be entitled to proceed against the Fund or the interest therein of any member of the Fund or his nominee or legal heir.

Explanation.—For the purposes of this section, “creditor” includes the State or an official assignee or official receiver appointed under the law relating to insolvency for the time being in force.

43 of 1961.

23. Notwithstanding anything contained in the Income-tax Act, 1961 or any other enactment for the time being in force relating to tax on income, profits or gains, the income accrued to the Fund constituted under sub-section (1) of section 3 shall be exempt from income-tax.

Exemption from income-tax.

24. The Trustee Committee may, for the welfare of the members of the Fund,—

(a) obtain, from the Life Insurance Corporation of India or any other insurer, policies of Group Insurance on the life of the members of the Fund; or

Group Life Insurance for members of Fund and other benefits.

(b) provide, in such manner as may be prescribed, for medical and educational facilities for the members of the Fund and their dependants; or

(c) provide monies to the members of the Fund for purchase of books; or

(d) provide monies to construct or maintain common facilities for the members of the Fund;

Provided that the Trustee Committee shall spend ten per cent. of the total annual subscription received under sub-section (5) of section 18 on the construction or maintenance of common facilities for the members of the Fund practising in the subordinate courts; or

(e) provide funds for any other purpose which the Trustee Committee may specify; or

(f) provide for such other benefits as may be prescribed.

25. (1) An appeal against any decision or order of the Trustee Committee shall lie to the State Bar Council.

Appeal against decision or order of Trustee Committee.

(2) The appeal shall be in the prescribed form and shall be accompanied by—

(a) a copy of the decision or order appealed against;

(b) a receipt evidencing payment of twenty-five rupees to the credit of the State Bar Council in any of the branches of a scheduled bank.

(3) The appeal shall be filed within thirty days from the date of receipt of the decision or order appealed against.

(4) The decision of the State Bar Council on such appeal shall be final.

CHAPTER VI

PRINTING, DISTRIBUTION AND CANCELLATION OF STAMPS

26. (1) The appropriate Government shall, on a request made by the State Bar Council in this behalf, cause to be printed and distributed Advocates' Welfare Fund Stamps of the value of five rupees or such other value, which may be prescribed, inscribing therein “Advocates' Welfare Fund Stamp”, in such design as may be prescribed.

Printing and distribution of Advocates' Welfare Fund Stamps by State Bar Council.

(2) Every stamp referred to in sub-section (1) shall be of the size 2.54 c.m. by 5.08 c.m. and sold to the advocates.

(3) The custody of the stamps shall be with the State Bar Council.

(4) The State Bar Council shall control the distribution and sale of the stamps through the State Bar Associations and the State Advocates' Associations.

(5) The State Bar Council, the State Bar Associations and the State Advocates' Associations shall keep proper accounts of the stamps in such form and manner as may be prescribed.

(6) The State Bar Associations and State Advocates' Associations shall purchase the stamps from the State Bar Council after paying the value thereof as reduced by ten per cent. of such value towards incidental expenses.

Vakalatnama to
bear stamps.

27. (1) Every advocate shall affix stamp of a value of—

(a) five rupees on every Vakalatnama filed by him in a District Court or a court subordinate to the District Court;

(b) ten rupees on every Vakalatnama filed by him in a tribunal or other authority or a High Court or the Supreme Court;

Provided that the appropriate Government may prescribe the value of the stamps not exceeding twenty-five rupees to be affixed under this sub-section:

Provided further that the appropriate Government may prescribe different value of the stamps to be affixed on every Vakalatnama to be filed in a District Court, or a court subordinate to the District Court or a tribunal or other authority or a High Court or the Supreme Court.

(2) The value of the stamp shall neither be the cost in a case nor be collected in any event from the client.

(3) Any contravention of the provisions of sub-section (1) or sub-section (2) by any advocate shall disentitle him either in whole or in part to the benefits of the Fund and the Trustee Committee shall report such contravention to the State Bar Council for appropriate action.

(4) Every stamp affixed on every Vakalatnama filed before a District Court or a court subordinate to the District Court or a tribunal or other authority or a High Court or the Supreme Court shall be cancelled in such manner as may be prescribed.

CHAPTER VII

MISCELLANEOUS

Certain persons
not to be eligible
for benefits.

28. No senior advocate, or a person in receipt of pension from the Central Government or a State Government, shall be entitled to *ex gratia* grant under section 19 or payment of amount on his cessation of practice under section 21 or any benefit under clause (a) or clause (b) or clause (c) of section 24.

Protection of
action taken in
good faith.

29. No suit, prosecution or other legal proceedings shall lie against the appropriate Government or the Trustee Committee or the Chairperson or a Member or the Secretary of the Trustee Committee or the State Bar Council or any person for anything which is in good faith done or intended to be done under this Act or the rules made thereunder.

Bar of jurisdiction
of civil courts.

30. No civil court shall have jurisdiction to settle, decide or deal with any question or to determine any matter which is by or under this Act required to be settled, decided or dealt with or to be determined by the Trustee Committee or the State Bar Council.

Power to summon
witnesses and take
evidence.

31. The Trustee Committee and the State Bar Council shall, for the purpose of any enquiry under this Act, have the same powers as are vested in a civil court while trying a suit under the Code of Civil Procedure, 1908 in respect of the following matters, namely:—

5 of 1908.

(a) enforcing the attendance of any person or examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavit;

(d) issuing commissions for the examination of witnesses;

(e) any other matter which may be prescribed.

Power to amend
Schedules I and II.

32. (1) The appropriate Government may, on the recommendation of the Trustee Committee, by notification, and having due regard to the availability of the amount in the Fund, amend the rates specified in Schedule I.

(2) The Central Government may, as and when considered necessary, by notification, amend Schedule II.

Power of
appropriate
Government to
issue directions.

33. (1) Without prejudice to the generality of the foregoing provisions of this Act, the Trustee Committee shall, in exercise of the powers or the performance of its functions under this Act, be bound by such directions on questions of policy, other than those relating to professional and administrative matters, as the appropriate Government may give in writing to it from time to time:

Provided that the Trustee Committee shall, as far as practicable, be given an opportunity to express its views before any direction is given under this sub-section.

(2) The decision of the appropriate Government, whether a question is one of policy or not, shall be final.

34. (1) If at any time the appropriate Government is of the opinion —

(a) that, on account of circumstances beyond the control of the Trustee Committee, it is unable to discharge the functions or perform the duties imposed on it by or under the provisions of this Act; or

(b) that the Trustee Committee has persistently defaulted in complying with any direction given by the appropriate Government under this Act or in the discharge of the functions or performance of the duties imposed on it by or under the provisions of this Act; or

(c) that circumstances exist which render it necessary in the public interest so to do,

the appropriate Government may, by notification and for reasons to be specified therein, supersede the Trustee Committee for such period, not exceeding six months, as may be specified in the notification and appoint, in consultation with the Chief Justice of the High Court having jurisdiction, a Judge of the High Court to be the Controller of the Trustee Committee:

Provided that before issuing any such notification, the appropriate Government shall give a reasonable opportunity to the Trustee Committee to make representations against the proposed supersession and shall consider the representations, if any, of the Trustee Committee.

(2) Upon the publication of a notification under sub-section (1) superseding the Trustee Committee,—

(a) the Chairperson, Members and the Secretary of the Trustee Committee shall, as from the date of supersession, vacate their offices as such;

(b) all powers, functions and duties which may, by or under the provisions of this Act, be exercised or discharged by or on behalf of the Trustee Committee shall, until the Trustee Committee is reconstituted under sub-section (3), be exercised and discharged by the Controller of the Trustee Committee; and

(c) all properties and Fund owned or controlled by the Trustee Committee shall, until the Trustee Committee is reconstituted under sub-section (3), vest in the appropriate Government.

(3) On or before the expiration of the period of supersession specified in the notification issued under sub-section (1), the appropriate Government shall reconstitute the Trustee Committee by a fresh appointment of its Chairperson, Members and Secretary of such Committee and in such case a person who had vacated his office under clause (a) of sub-section (2) shall not be deemed to be disqualified for reappointment.

(4) The appropriate Government shall cause a copy of the notification issued under sub-section (1) and a full report of any action taken under this section and the circumstances leading to such action to be laid before each House of Parliament or before each House of the State Legislature, where it consists of two Houses or where such Legislature consists of one House, before that House, as the case may be, at the earliest.

35. (1) The Central Government, being the appropriate Government, may, by notification, make rules for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the periodical and annual reports to be sent under clause (f) of section 11;

Power of appropriate Government to supersede Trustee Committee.

Power of Central Government to make rules.

(b) the form and the manner in which the annual statement of accounts and annual report shall be prepared under sub-section (1) of section 13;

(c) the forms, registers and other records to be maintained under clause (g) of section 14;

(d) the form in which an association of advocates may apply for recognition to the State Bar Council under sub-section (1) or sub-section (2) of section 16;

(e) the form in which a certificate of recognition shall be issued by the State Bar Council under sub-section (4) of section 16;

(f) the form in which an advocate shall apply for admission as a member of the Fund under sub-section (1) or sub-section (2) of section 18;

(g) the principles in accordance with which the amount payable to a member of the Fund be reduced under sub-section (12) of section 18;

(h) the manner of providing medical and educational facilities for the members of the Fund and their dependants under clause (b) of section 24;

(i) the other benefits to be provided under clause (f) of section 24;

(j) the form of appeal under sub-section (2) of section 25;

(k) the value and design of stamps to be printed and distributed under sub-section (1) of section 26;

(l) the form and the manner in which accounts of the stamps shall be kept under sub-section (5) of section 26;

(m) the value of stamps not exceeding twenty-five rupees as may be prescribed under the first proviso to sub-section (1) of section 27;

(n) the value of stamps to be affixed on every Vakalatnama under the second proviso to sub-section (1) of section 27;

(o) the manner of cancellation of stamps under sub-section (4) of section 27;

(p) any other matter which is to be, or may be, prescribed.

Power of State Government to make rules.

36. (1) The State Government, being the appropriate Government, may, by notification, make rules for carrying out the provisions of this Act and not inconsistent with the rules, if any, made by the Central Government.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the periodical and annual reports to be sent under clause (f) of section 11;

(b) the form and the manner in which the annual statement of accounts and annual report shall be prepared under sub-section (1) of section 13;

(c) the forms, registers and other records to be maintained under clause (g) of section 14;

(d) the form in which an association of advocates may apply for recognition to the State Bar Council under sub-section (1) or sub-section (2) of section 16;

(e) the form in which a certificate of recognition shall be issued by the State Bar Council under sub-section (4) of section 16;

(f) the form in which an advocate shall apply for admission as a member of the Fund under sub-section (1) or sub-section (2) of section 18;

(g) the principles in accordance with which the amount payable to a member of the Fund be reduced under sub-section (12) of section 18;

(h) the manner of providing medical and educational facilities for the members of the Fund and their dependants under clause (b) of section 24;

- (i) the other benefits to be provided under clause (f) of section 24;
- (j) the form of appeal under sub-section (2) of section 25;
- (k) the value and design of stamps to be printed and distributed under sub-section (1) of section 26;
- (l) the form and the manner in which accounts of the stamps shall be kept under sub-section (5) of section 26;
- (m) the value of stamps not exceeding twenty-five rupees as may be prescribed under the first proviso to sub-section (1) of section 27;
- (n) the value of stamps to be affixed on every Vakalatnama under the second proviso to sub-section (1) of section 27;
- (o) the manner of cancellation of stamps under sub-section (4) of section 27;
- (p) any other matter which is to be or may be prescribed.

37. (1) Every rule made under this Act by the Central Government and every notification issued under section 32, shall be laid, as soon as may be after it is made or issued, before each House of Parliament, while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or notification or both Houses agree that the rule or notification should not be made or issued, the rule or notification shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or notification.

Rules and
notifications to
be laid before
Parliament or
State Legislature.

(2) Every rule made under this Act by a State Government and every notification issued under section 32 shall be laid, as soon as may be after it is made, before each House of State Legislature where it consists of two Houses, or where such Legislature consists of one House, before that House.

38. The provisions of this Act shall not apply to the States in which the enactments specified in Schedule II are applicable.

Saving.

VI-EX-1-4

SCHEDULE I

[See sections 21(1) and 32(1)]

Number of years as member of the Fund	Rate at which amount payable
(1)	(2)
30	Rs. 30,000
29	Rs. 29,000
28	Rs. 28,000
27	Rs. 27,000
26	Rs. 26,000
25	Rs. 25,000
24	Rs. 24,000
23	Rs. 23,000
22	Rs. 22,000
21	Rs. 21,000
20	Rs. 20,000
19	Rs. 19,000
18	Rs. 18,000
17	Rs. 17,000
16	Rs. 16,000
15	Rs. 15,000
14	Rs. 14,000
13	Rs. 13,000
12	Rs. 12,000
11	Rs. 11,000
10	Rs. 10,000
9	Rs. 9,000
8	Rs. 8,000
7	Rs. 7,000
6	Rs. 6,000
5	Rs. 5,000
4	Rs. 4,000
3	Rs. 3,000
2	Rs. 2,000
1	Rs. 1,000

SCHEDULE II

[See sections 32(2) and 38]

1. The Uttar Pradesh Advocates' Welfare Fund Act, 1974 (6 of 1974).
2. The Bihar State Advocates' Welfare Fund Act, 1983 (16 of 1983).
3. The Madhya Pradesh Adhivakata Kalyan Nidhi Adhiniyam, 1982 (9 of 1982).
4. The Andhra Pradesh Advocates' Welfare Fund Act, 1987 (33 of 1987).
5. The Orissa Advocates' Welfare Fund Act, 1987 (18 of 1987).
6. The Rajasthan Advocates' Welfare Fund Act, 1987 (15 of 1987).
7. The Tamil Nadu Advocates' Welfare Fund Act, 1987 (49 of 1987).
8. The Gujarat Advocates Welfare Fund Act, 1991 (14 of 1991).
9. The Goa Advocates Welfare Fund Act, 1995 (2 of 1997).
10. The Assam Advocates' Welfare Fund Act, 1998 (XVIII of 1999).
11. The Maharashtra Advocates' Welfare Fund Act, 1981 (LXI of 1981).
12. The Himachal Pradesh Advocates Welfare Fund Act, 1996 (14 of 1996).
13. The Kerala Advocates' Welfare Fund Act, 1980 (21 of 1980).
14. The Karnataka Advocates' Welfare Fund Act, 1983 (2 of 1985).
15. The West Bengal Advocates Welfare Fund Act, 1991 (XIII of 1991).
16. The Jammu and Kashmir Advocates Welfare Fund Act, 1997 (XXVI of 1997).

Sd/-

D.R. SUBHASH C. JAIN,
Secretary to the Govt. of India.

By order and in the name of the Governor of Gujarat,

V. M. KOTHARE,
Secretary to Government.



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PART - VI

Acts of Parliament and Ordinances Promulgated by the President

LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT

Sachivalaya, Gandhinagar, 2nd February, 2002.

No. RPB/2/2002/Act-4601/234/ /E.—The following Act of Parliament is republished for general information:—

GOVERNMENT OF INDIA

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS,
(Legislative Department)

New Delhi, the 14th September, 2001/Bhadra 23, 1923 (Saka)

The following Act of Parliament received the assent of the President on the 14th September, 2001 and is hereby published for general information:—

THE SALARY, ALLOWANCES AND PENSION OF MEMBERS OF
PARLIAMENT (AMENDMENT) ACT, 2001.

(Act No. 46 of 2001)

AN ACT

(14th September, 2001)

*further to amend the Salary, Allowances and Pension of
Members of Parliament Act, 1954.*

BE it enacted by Parliament in the Fifty-second Year of the Republic of India as follows:—

1. This Act may be called the Salary, Allowances and Pension of Members of Parliament (Amendment) Act, 2001. Short title.

2. In section 3 of the Salary, Allowances and Pension of Members of Parliament Act, 1954 (hereinafter referred to as the principal Act), after the proviso, the following provisos shall be inserted, namely:— Amendment of section 3.

Provided further that in the case of salary, the provisions of this section shall have effect as if for the words "four thousand rupees", the words "twelve thousand rupees" had been substituted for a period of five years beginning from the date of commencement of the Salary, Allowances and Pension of Members of Parliament (Amendment) Act, 2001:

Provided also that in the case of the allowance, the provisions of this section shall have effect as if for the words "four hundred rupees", the words "five hundred rupees" had been substituted for a period of five years beginning from the date of commencement of the Salary, Allowances and Pension of Members of Parliament (Amendment) Act, 2001.

Amendment of
section 4.

3. In section 4 of the principal Act, in sub-section (1), in clause (c), in sub-clause (ii), for the words "six rupees per kilometre", the words "eight rupees per kilometre" shall be substituted.

Amendment of
section 8A.

4. In section 8A of the principal Act, in sub-section (1),—

(a) for the words "two thousand and five hundred rupees", the words "three thousand rupees" shall be substituted;

(b) in the first proviso, for the words "five hundred rupees", the words "six hundred rupees" shall be substituted.

Sd/—

DR. SUBHASH C. JAIN,
Secretary to the Govt. of India.

By order and in the name of the Governor of Gujarat,

V. M. KOTHARE,
Secretary to Government.

GOVERNMENT CENTRAL PRESS, GANDHINAGAR.



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Sachivalaya, Gandhinagar, 2nd February, 2002.

No. RPB/3/2002/Act-4701/234/ /E.—The following Act of Parliament is republished for general information:—

GOVERNMENT OF INDIA

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS, (Legislative Department)

New Delhi, the 14th September, 2001/Bhadra 23, 1923 (Saka)

The following Act of Parliament received the assent of the President on the 14th September, 2001 and is hereby published for general information:—

THE TWO-MEMBER CONSTITUENCIES (ABOLITION) AND OTHER LAWS REPEAL ACT, 2001.

(Act No. 47 of 2001)

AN ACT

(14th September, 2001)

*to repeal the Two-Member Constituencies (Abolition) Act, 1961 and
certain other enactments.*

BE it enacted by Parliament in the Fifty-second Year of the Republic of India as follows:—

1. This Act may be called the Two-Member Constituencies (Abolition) and other Laws Repeal Act, 2001. Short title.

2. The enactments specified in the Schedule are hereby repealed.

Repeal of
enactments.

VI- Ex. 3-1

3-1

THE SCHEDULE

(See section 2)

REPEAL OF ENACTMENTS

Sl. No.	Name of the Act	Year	Act No.
1.	The Two-Member Constituencies (Abolition) Act	1961	1
2.	The Madras State (Alteration of Name) Act	1968	53
3.	The West Bengal Legislative Council (Abolition) Act	1969	20
4.	The Mysore State (Alteration of Name) Act	1973	31
5.	The Laccadive, Minicoy and Amindivi Islands (Alteration of Name) Act	1973	34
6.	The Andhra Pradesh Legislative Council (Abolition) Act	1985	34
7.	The Tamil Nadu Legislative Council (Abolition) Act	1986	40

Sd/-

DR. SUBHASH C. JAIN,
Secretary to the Govt. of India.

By order and in the name of the Governor of Gujarat,

V. M. KOTHARE,
Secretary to Government.

GOVERNMENT CENTRAL PRESS, GANDHINAGAR.



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Sachivalaya, Gandhinagar, 2nd February, 2002.

No. RPB/8/2002/Act-4801/231/E.—The following Act of Parliament is republished for general information:—

GOVERNMENT OF INDIA

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS,
(Legislative Department)

New Delhi, the 24th September, 2001/Asvina 2, 1923 (Saka)

The following Act of Parliament received the assent of the President on the 24th September, 2001 and is hereby published for general information:—

THE REGISTRATION AND OTHER RELATED LAWS
(AMENDMENT) ACT, 2001.

(Act No. 48 of 2001)

AN ACT

(24th September, 2001)

further to amend the Registration Act, 1908, the Transfer of Property Act, 1882 and the Indian Stamp Act, 1899

BE it enacted by Parliament in the Fifty-second Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. This Act may be called the Registration and Other Related Laws (Amendment) Act, 2001. Short title.

CHAPTER II

AMENDMENT OF THE REGISTRATION ACT, 1908

16 of 1908.

2. In the Registration Act, 1908 (hereafter in this Chapter referred to as the Registration Act), after section 16, the following section shall be inserted, namely:—

Insertion of new section 16A.

“16A. (1) Notwithstanding anything contained in section 16, the books provided under sub-section (1) of that section may also be kept in computer floppies or diskettes or in any other electronic form in the manner and subject to the safeguards as may be prescribed by the Inspector-General with the sanction of the State Government.

Keeping of books in computer floppies, diskettes, etc.

(2) Notwithstanding anything contained in this Act or in any other law for the time being in force, a copy or extracts from the books kept under sub-section (1) given by the registering officer under his hand and seal shall be deemed to be a copy given under section 57 for the purposes of sub-section (5) of that section.”.

Amendment of
section 17.

3. In section 17 of the Registration Act,—

(a) after sub-section (1), the following sub-section shall be inserted, namely:—

“(1A) The documents containing contracts to transfer for consideration, any immovable property for the purpose of section 53A of the Transfer of Property Act, 1882 shall be registered if they have been executed on or after the commencement of the Registration and Other Related Laws (Amendment) Act, 2001 and if such documents are not registered on or after such commencement, then, they shall have no effect for the purposes of the said section 53A.”;

4 of 1882.

(b) in sub-section (2), in clause (v), for the opening words “any document”, the words, brackets, figure and letter “any document other than the documents specified in sub-section (1A)” shall be substituted.

Amendment of
section 30.

4. In section 30 of the Registration Act, sub-section (2) shall be omitted.

Insertion of
new section
32A.

5. After section 32 of the Registration Act, the following section shall be inserted, namely:—

Compulsory
affixing of
photograph,
etc.

“32A. Every person presenting any document at the proper registration office under section 32 shall affix his passport size photograph and fingerprints to the document:

Provided that where such document relates to the transfer of ownership of immovable property, the passport size photograph and fingerprints of each buyer and seller of such property mentioned in the document shall also be affixed to the document.”.

Amendment of
section 49.

6. In section 49 of the Registration Act, in the proviso, the words, figures and letter “or as evidence of part performance of a contract for the purposes of section 53A of the Transfer of Property Act, 1882,” shall be omitted.

4 of 1882.

Amendment of
section 52.

7. In section 52 of the Registration Act, in sub-section (1), in clause (a), after the words “and place of presentation”, the words, figures and letter “the photographs and fingerprints affixed under section 32A” shall be inserted.

Omission of
section 67.

8. Section 67 of the Registration Act shall be omitted.

Amendment of
section 69.

9. In section 69 of the Registration Act, in sub-section (1), after clause (a), the following clause shall be inserted, namely:—

“(aa) providing the manner in which and the safeguards subject to which the books may be kept in computer floppies or diskettes or in any other electronic form under sub-section (1) of section 16A;”.

CHAPTER III

AMENDMENT OF THE TRANSFER OF PROPERTY ACT, 1882

Amendment of
section 53A of
Act 4 of 1882.

10. In section 53A of the Transfer of Property Act, 1882, the words “the contract, though required to be registered, has not been registered, or,” shall be omitted.

CHAPTER IV

AMENDMENT OF THE INDIAN STAMP ACT, 1899

11. In Schedule I to the Indian Stamp Act, 1899,—

Amendment
of Schedule I
of Act 2 of
1899.

(a) under column heading "Description of Instrument", in article No. 23, in *Exemption*, the portion beginning with the words "Assignment of Copyright" and ending with the word and figure "section 5." shall be numbered as clause (a) thereof, and after clause (a) as so numbered, the following clause shall be inserted, namely:—

"(b) for the purpose of this article, the portion of duty paid in respect of a document falling under article No. 23A shall be excluded while computing the duty payable in respect of a corresponding document relating to the completion of the transaction in any union territory under this article.";

(b) after article No. 23 and the entries relating thereto, the following article No. and the entries shall be inserted, namely:—

Description of Instrument	Proper Stamp-duty
4 of 1882. "23A. CONVEYANCE IN THE NATURE OF PART PERFORMANCE Contracts for the transfer of immovable property in the nature of part performance in any union territory under section 53A of the Transfer of Property Act, 1882.	Ninety per cent. of the duty as a Conveyance (No. 23)."

12. Notwithstanding anything contained in sections 6 and 10, any—

Saving.

4 of 1882. (a) right of a transferor or any person claiming under him debarred under section 53A of the Transfer of Property Act, 1882 immediately before the commencement of this Act shall remain so debarred as if section 10 had not come into force in respect of such right; and

4 of 1882. (b) unregistered document relating to the right referred to in clause (a) may be received as evidence of part performance of a contract for the purposes of section 53A of the Transfer of Property Act, 1882 as if section 6 had not come into force in respect of such document.

Sd/—

DR. SUBHASH C. JAIN,
Secretary to the Govt. of India.

By order and in the name of the Governor of Gujarat,

V. M. KOTHARE,
Secretary to Government.



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LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT

Sachivalaya, Gandhinagar, 2nd February, 2002.

No. RPB/5/2002/Act-4901/231/E.—The following Act of Parliament is republished for general information:—

GOVERNMENT OF INDIA

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS,
(Legislative Department)

New Delhi, the 24th September, 2001/Asvina 2, 1923 (Saka)

The following Act of Parliament received the assent of the President on the 24th September, 2001 and is hereby published for general information:—

THE MARRIAGE LAWS (AMENDMENT) ACT, 2001.

(Act No. 49 of 2001)

AN ACT

(24th September, 2001)

further to amend the Indian Divorce Act, 1869, the Parsi Marriage and Divorce Act, 1936, the Special Marriage Act, 1954 and the Hindu Marriage Act, 1955.

BE it enacted by Parliament in the Fifty-second Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. This Act may be called the Marriage Laws (Amendment) Act, 2001.

Short title.

CHAPTER II

AMENDMENTS TO THE INDIAN DIVORCE ACT, 1869

4 of 1869.

2. In section 36 of the Indian Divorce Act, 1869 (hereafter in this Chapter referred to as the Divorce Act), —

Amendment of section 36.

(a) for the words “the wife may present a petition for alimony pending the suit”, the words “the wife may present a petition for expenses of the proceedings and alimony pending the suit” shall be substituted;

(b) for the words “for payment to the wife of alimony pending the suit”, the words “for payment to the wife of the expenses of the proceedings and alimony pending the suit” shall be substituted;

(c) after the proviso, the following proviso shall be inserted, namely:—

“Provided further that the petition for the expenses of the proceedings and alimony pending the suit, shall, as far as possible, be disposed of within sixty days of service of such petition on the husband.”

Amendment of
section 41.

3. In section 41 of the Divorce Act, the following proviso shall be inserted, namely:—

“Provided that the application with respect to the maintenance and education of the minor children pending the suit, shall, as far as possible, be disposed of within sixty days from the date of service of notice on the respondent.”

CHAPTER III

AMENDMENTS TO THE PARSİ MARRIAGE AND DIVORCE ACT, 1936

Amendment of
section 39.

4. In section 39 of the Parsi Marriage and Divorce Act, 1936 (hereafter in this Chapter referred to as the Parsi Marriage and Divorce Act), the following proviso shall be inserted, namely:— 3 of 1936.

“Provided that the application for the payment of the expenses of the suit and such weekly or monthly sum during the suit, shall, as far as possible, be disposed of within sixty days from the date of service of notice on the wife or the husband, as the case may be.”

Amendment of
section 49.

5. In section 49 of the Parsi Marriage and Divorce Act, the following proviso shall be inserted, namely:—

“Provided that the application with respect to the maintenance and education of such children during the suit, shall, as far as possible, be disposed of within sixty days from the date of service of notice on the respondent.”

CHAPTER IV

AMENDMENTS TO THE SPECIAL MARRIAGE ACT, 1954

Amendment of
section 36.

6. In section 36 of the Special Marriage Act, 1954 (hereafter in this Chapter referred to as the Special Marriage Act), the following proviso shall be inserted, namely:— 43 of 1954.

“Provided that the application for the payment of the expenses of the proceeding and such weekly or monthly sum during the proceeding under Chapter V or Chapter VI, shall, as far as possible, be disposed of within sixty days from the date of service of notice on the husband.”

Amendment of
section 38.

7. In section 38 of the Special Marriage Act, the following proviso shall be inserted, namely:—

“Provided that the application with respect to the maintenance and education of the minor children, during the proceeding, under Chapter V or Chapter VI, shall, as far as possible, be disposed of within sixty days from the date of service of notice on the respondent.”

CHAPTER V

AMENDMENTS TO THE HINDU MARRIAGE ACT, 1955

Amendment of
section 24.

8. In section 24 of the Hindu Marriage Act, 1955 (hereafter in this Chapter referred to as the Hindu Marriage Act), the following proviso shall be inserted, namely:— 25 of 1955.

“Provided that the application for the payment of the expenses of the proceeding and such monthly sum during the proceeding, shall, as far as possible, be disposed of within sixty days from the date of service of notice on the wife or the husband, as the case may be.”

9. In section 26 of the Hindu Marriage Act, the following proviso shall be inserted, namely:—

Amendment of
section 26.

“Provided that the application with respect to the maintenance and education of the minor children, pending the proceeding for obtaining such decree, shall, as far as possible, be disposed of within sixty days from the date of service of notice on the respondent.”.

Sd/—

DR. SUBHASH C. JAIN,
Secretary to the Govt. of India.

By order and in the name of the Governor of Gujarat,

V. M. KOTHARE,
Secretary to Government.

GOVERNMENT CENTRAL PRESS, GANDHINAGAR.



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PART - VI

Acts of Parliament and Ordinances Promulgated by the President

LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT

Sachivalaya, Gandhinagar, 2nd February, 2002.

No. RPB/6/2002/Act-5001/231/E.—The following Act of Parliament is republished for general information:—

GOVERNMENT OF INDIA

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS,
(Legislative Department)

New Delhi, the 24th September, 2001/Asvina 2, 1923 (Saka)

The following Act of Parliament received the assent of the President on the 24th September, 2001 and is hereby published for general information:—

THE CODE OF CRIMINAL PROCEDURE (AMENDMENT) ACT, 2001.

(Act No. 50 of 2001)

AN ACT

(24th September, 2001)

further to amend the Code of Criminal Procedure, 1973.

BE it enacted by Parliament in the Fifty-second Year of the Republic of India as follows:—

- | | | |
|------------|--|---------------------------|
| 2 of 1974. | 1. This Act may be called the Code of Criminal Procedure (Amendment) Act, 2001. | Short title. |
| | 2. In the Code of Criminal Procedure, 1973 (hereinafter referred to as the principal Act), in section 125,— | Amendment of section 125. |
| | (i) in sub-section (1),— | |
| | (a) the words “not exceeding five hundred rupees in the whole,” shall be omitted; | |
| | (b) after the proviso and before the <i>Explanation</i> , the following provisos shall be inserted, namely:— | |

“Provided further that the Magistrate may, during the pendency of the proceeding regarding monthly allowance for the maintenance under this sub-section, order such person to make a monthly allowance for the interim maintenance of his wife or such child, father or mother, and the expenses of such proceeding which the Magistrate considers reasonable, and to pay the same to such person as the Magistrate may from time to time direct:

Provided also that an application for the monthly allowance for the interim maintenance and expenses for proceeding under the second proviso shall, as far as possible, be disposed of within sixty days from the date of the service of notice of the application to such person.”;

(ii) for sub-section (2), the following sub-section shall be substituted, namely:—

“(2) Any such allowance for the maintenance or interim maintenance and expenses for proceeding shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance or interim maintenance and expenses of proceeding, as the case may be.”;

(iii) in sub-sections (3) and (4), for the word “allowance”, wherever it occurs, the words “allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be,” shall be substituted.

Amendment of
section 127.

3. In section 127 of the principal Act,—

(i) for sub-section (1), the following sub-section shall be substituted, namely:—

“(1) On proof of a change in the circumstances of any person, receiving, under section 125 a monthly allowance for the maintenance or interim maintenance, or ordered under the same section to pay a monthly allowance for the maintenance, or interim maintenance, to his wife, child, father or mother, as the case may be, the Magistrate may make such alteration, as he thinks fit, in the allowance for the maintenance or the interim maintenance, as the case may be.”;

(ii) in sub-section (3), in clause (c), for the word “maintenance”, the words “maintenance or interim maintenance, as the case may be,” shall be substituted;

(iii) in sub-section (4),—

(a) for the words “monthly allowance has been ordered”, the words “monthly allowance for the maintenance and interim maintenance or any of them has been ordered” shall be substituted;

(b) for the words “as monthly allowance in pursuance of”, the words “as monthly allowance for the maintenance and interim maintenance or any of them, as the case may be, in pursuance of” shall be substituted.

Amendment of
section 128.

4. In section 128 of the principal Act,—

(i) for the word “maintenance”, the words “maintenance or interim maintenance and expenses of proceeding, as the case may be,” shall be substituted;

(ii) for the words “whom the allowance”, the words “whom the allowance for the maintenance or the allowance for the interim maintenance and expenses of proceeding, as the case may be,” shall be substituted;

(iii) for the words “allowance due”, the words “allowance, or as the case may be, expenses, due” shall be substituted.

Sd/—

DR. SUBHASH C. JAIN,
Secretary to the Govt. of India.

By order and in the name of the Governor of Gujarat,

V. M. KOTHARE,
Secretary to Government.

GOVERNMENT CENTRAL PRESS, GANDHINAGAR.



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PART - VI

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LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT

Sachivalaya, Gandhinagar, 2nd February, 2002.

No. RPB/7/2002/Act-5101/231/E.—The following Act of Parliament is republished for general information:—

GOVERNMENT OF INDIA

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS,
(Legislative Department)

New Delhi, the 24th September, 2001/Asvina 2, 1923 (Saka)

The following Act of Parliament received the assent of the President on the 24th September, 2001 and is hereby published for general information:—

THE INDIAN DIVORCE (AMENDMENT) ACT, 2001.

(Act No. 51 of 2001)

AN ACT

(24th September, 2001)

further to amend the Indian Divorce Act, 1869.

BE it enacted by Parliament in the Fifty-second Year of the Republic of India as follows:—

1. (1) This Act may be called the Indian Divorce (Amendment) Act, 2001.

Short title and commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

4 of 1869.

2. In section 1 of the Indian Divorce Act, 1869 (hereinafter referred to as the principal Act), the word "Indian" shall be omitted.

Amendment of section 1.

3. In section 3 of the principal Act,—

Amendment of section 3.

(a) in clause (3), for the words "or of whose jurisdiction under this Act", the words "or of whose jurisdiction under this Act the marriage was solemnized or" shall be substituted;

(b) clauses (6) and (7) shall be omitted.

Omission of
section 7.

4. Section 7 of the principal Act shall be omitted.

Substitution
of new section
for section 10.

5. For section 10 of the principal Act, the following section shall be substituted, namely:—

Grounds for
dissolution
of marriage.

"10. (1) Any marriage solemnized, whether before or after the commencement of the Indian Divorce (Amendment) Act, 2001, may, on a petition presented to the District Court either by the husband or the wife, be dissolved on the ground that since the solemnization of the marriage, the respondent —

(i) has committed adultery; or

(ii) has ceased to be Christian by conversion to another religion; or

(iii) has been incurably of unsound mind for a continuous period of not less than two years immediately preceding the presentation of the petition; or

(iv) has, for a period of not less than two years immediately preceding the presentation of the petition, been suffering from a virulent and incurable form of leprosy; or

(v) has, for a period of not less than two years immediately preceding the presentation of the petition, been suffering from venereal disease in a communicable form; or

(vi) has not been heard of as being alive for a period of seven years or more by those persons who would naturally have heard of the respondent if the respondent had been alive; or

(vii) has wilfully refused to consummate the marriage and the marriage has not therefore been consummated; or

(viii) has failed to comply with a decree for restitution of conjugal rights for a period of two years or upwards after the passing of the decree against the respondent; or

(ix) has deserted the petitioner for at least two years immediately preceding the presentation of the petition; or

(x) has treated the petitioner with such cruelty as to cause a reasonable apprehension in the mind of the petitioner that it would be harmful or injurious for the petitioner to live with the respondent.

(2) A wife may also present a petition for the dissolution of her marriage on the ground that the husband has, since the solemnization of the marriage, been guilty of rape, sodomy or bestiality."

Insertion of
new section
10A.

6. After section 10 of the principal Act, the following section shall be inserted, namely:—

Dissolution of
marriage by
mutual con-
sent.

"10A. (1) Subject to the provisions of this Act and the rules made thereunder, a petition for dissolution of marriage may be presented to the District Court by both the parties to a marriage together, whether such marriage was solemnized before or after the commencement of the Indian Divorce (Amendment) Act, 2001, on the ground that they have been living separately for a period of two years or more, that they have not been able to live together and they have mutually agreed that the marriage should be dissolved.

(2) On the motion of both the parties made not earlier than six months after the date of presentation of the petition referred to in sub-section (1) and not later than eighteen months after the said date, if the petition is not withdrawn by both the parties in the meantime, the Court shall, on being satisfied, after hearing the parties and

making such inquiry, as it thinks fit, that a marriage has been solemnized and that the averments in the petition are true, pass a decree declaring the marriage to be dissolved with effect from the date of decree."

7. For section 11 of the principal Act, the following section shall be substituted, namely:—

Substitution of new section for section 11.

"11. On a petition for dissolution of marriage presented by a husband or wife on the ground of adultery, the petitioner shall make the alleged adulterer or adulteress a co-respondent, unless the petitioner is excused by the Court from so doing on any of the following grounds, namely:—

Adulterer or adulteress to be co-respondent.

(a) that the wife, being the respondent is leading the life of a prostitute or the husband, being respondent is leading an immoral life and that the petitioner knows of no person with whom the adultery has been committed;

(b) that the name of the alleged adulterer or adulteress is unknown to the petitioner although the petitioner has made due efforts to discover it;

(c) that the alleged adulterer or adulteress is dead."

8. In section 13 of the principal Act, the last paragraph shall be omitted.

Amendment of section 13.

9. In section 14 of the principal Act, in paragraph 4, the words "in the manner and subject to all the provisions and limitations in sections 16 and 17 made and declared" shall be omitted.

Amendment of section 14.

10. In section 15 of the principal Act,—

Amendment of section 15.

(a) the words "without reasonable excuse" shall be omitted;

(b) for the words "her adultery and cruelty", the words "her adultery or cruelty or desertion" shall be substituted;

(c) for the words "such cruelty", the words "such adultery, cruelty" shall be substituted.

11. In section 16 of the principal Act, the words, "not being a confirmation of a decree of a District Court," shall be omitted.

Amendment of section 16.

12. For section 17 of the principal Act, the following section shall be substituted, namely:—

Substitution of new section for section 17. Power of High Court to remove certain suits.

"17. During the progress of the suit in the Court of the District Judge, any person suspecting that any parties to the suit are or have been acting in collusion for the purpose of obtaining a divorce, shall be at liberty, in such manner as the High Court by general or special order from time to time directs, to apply to the High Court to remove the suit under section 8, and the Court shall thereupon, if it thinks fit, remove such suit and try and determine the same as a court of original jurisdiction, and the provisions contained in section 16 shall apply to every suit so removed; or it may direct the District Judge to take such steps in respect of the alleged collusion as may be necessary, to enable him to make a decree in accordance with the justice of the case."

13. Section 17A of the principal Act shall be omitted.

Omission of section 17A.

14. In section 18 of the principal Act, the words "or to the High Court" shall be omitted.

Amendment of section 18.

15. In section 19 of the principal Act, in the last paragraph, for the words "jurisdiction of the High Court", the words "jurisdiction of the District Court" shall be substituted.

Amendment of section 19.

16. Section 20 of the principal Act shall be omitted.

Omission of section 20.

17. In section 22 of the principal Act, the words "without reasonable excuse" shall be omitted.

Amendment of section 22.

- Amendment of sections 23, 27 and 32. 18. In sections 23, 27 and 32 of the principal Act, the words "or the High Court" shall be omitted.
- Omission of section 34. 19. Section 34 of the principal Act shall be omitted.
- Omission of section 35. 20. Section 35 of the principal Act shall be omitted.
- Amendment of section 36. 21. In section 36 of the principal Act, the proviso shall be omitted.
- Amendment of section 37. 22. In section 37 of the principal Act, for the portion beginning with the words "The High Court" and ending with the words "the husband shall", the words "Where a decree of dissolution of the marriage or a decree of judicial separation is obtained by the wife, the District Court may order that the husband shall" shall be substituted.
- Omission of section 39. 23. Section 39 of the principal Act shall be omitted.
- Amendment of section 40. 24. In section 40 of the principal Act, for the portion beginning with the words "The High Court" and ending with the words "may inquire into", the words "The District Court may, before passing a decree for dissolution of the marriage or a decree of nullity of marriage, inquire into" shall be substituted.
- Amendment of section 43. 25. In section 43 of the principal Act, for the portion beginning with the words "In any suit for obtaining" and ending with the words "deems proper", the words "In any suit for obtaining a dissolution of marriage or a decree of nullity of marriage instituted in a District Court, the Court may from time to time before making its decree, make such interim orders as it may deem proper" shall be substituted.
- Amendment of section 44. 26. In section 44 of the principal Act, for the portion beginning with the words "The High Court" and ending with the words "may upon application", the words "Where a decree of dissolution or nullity of marriage has been passed, the District Court may, upon application" shall be substituted.
- Amendment of section 45. 27. In section 45 of the principal Act, for the words "Code of Civil Procedure", the words and figures "Code of Civil Procedure, 1908" shall be substituted.
- Amendment of section 52. 28. In section 52 of the principal Act, for the portion beginning with the words "by a wife" and ending with the words "without reasonable excuse", the words "by a husband or a wife, praying that his or her marriage may be dissolved by reason of his wife or her husband, as the case may be, having been guilty of adultery, cruelty or desertion" shall be substituted.
- Amendment of section 55. 29. In section 55 of the principal Act,—
(a) the first proviso shall be omitted;
(b) in the second proviso, for the words "Provided also", the words "Provided" shall be substituted.
- Substitution of new section for section 57. 30. For section 57 of the principal Act, the following section shall be substituted, namely:—
- Liberty to parties to marry again. "57. Where a decree for dissolution or nullity of marriage has been passed and either the time for appeal has expired without an appeal having been presented to any court including the Supreme Court or an appeal has been presented but has been dismissed and the decree or dismissal has become final, it shall be lawful for either party to the marriage to marry again."

- | | | |
|--|--|--------------------------|
| 5 of 1908. | 31. In section 62 of the principal Act, for the words "Code of Civil Procedure", the words and figures "Code of Civil Procedure, 1908" shall be substituted. | Amendment of section 62. |
| 16 & 17 Geo. 5, c. 40, 3 and 4 Geo. IV C. 35, 9 Geo. VI C. 51. | 32. The Indian and Colonial Divorce Jurisdiction Act, 1926, the Indian and Colonial Divorce Jurisdiction Act, 1940 and the Indian Divorce Act, 1945 are hereby repealed. | Repeal. |

Sd/-

DR. SUBHASH C. JAIN,
Secretary to the Govt. of India.

By order and in the name of the Governor of Gujarat,

V. M. KOTHARE,
Secretary to Government.

GOVERNMENT CENTRAL PRESS, GANDHINAGAR.



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PART - VI

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LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT

Sachivalaya, Gandhinagar, 2nd February, 2002.

No. RPB/4/2002/Act-5201/233/E.—The following Act of Parliament is republished for general information:—

GOVERNMENT OF INDIA

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS,
(Legislative Department)

New Delhi, the 1st October, 2001/Asvina 9, 1923 (Saka)

The following Act of Parliament received the assent of the President on the 29th September, 2001 and is hereby published for general information:—

THE ENERGY CONSERVATION ACT, 2001.

(Act No. 52 of 2001)

AN ACT

(29th September, 2001)

to provide for efficient use of energy and its conservation and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Fifty-second Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Energy Conservation Act, 2001.
- (2) It extends to the whole of India except the State of Jammu and Kashmir.
- (3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint; and different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

Short title,
extent and
commence-
ment.

Definitions.

2. In this Act, unless the context otherwise requires,—

(a) “accredited energy auditor” means an auditor possessing qualifications specified under clause (p) of sub-section (2) of section 13;

(b) “Appellate Tribunal” means the Appellate Tribunal for Energy Conservation established under section 30;

(c) “building” means any structure or erection or part of a structure or erection, after the rules relating to energy conservation building codes have been notified under clause (a) of section 15 or clause (l) of sub-section (2) of section 56, which is having a connected load of 500 kW or contract demand of 600 kVA and above and is intended to be used for commercial purposes;

(d) “Bureau” means the Bureau of Energy Efficiency established under sub-section (1) of section 3;

(e) “Chairperson” means the Chairperson of the Governing Council;

(f) “designated agency” means any agency designated under clause (d) of section 15;

(g) “designated consumer” means any consumer specified under clause (e) of section 14;

(h) “energy” means any form of energy derived from fossil fuels, nuclear substances or materials, hydro-electricity and includes electrical energy or electricity generated from renewable sources of energy or bio-mass connected to the grid;

(i) “energy audit” means the verification, monitoring and analysis of use of energy including submission of technical report containing recommendations for improving energy efficiency with cost benefit analysis and an action plan to reduce energy consumption;

(j) “energy conservation building codes” means the norms and standards of energy consumption expressed in terms of per square metre of the area wherein energy is used and includes the location of the building;

(k) “energy consumption standards” means the norms for process and energy consumption standards specified under clause (a) of section 14;

(l) “Energy Management Centre” means the Energy Management Centre set up under the Resolution of the Government of India in the erstwhile Ministry of Energy, Department of Power No. 7(2)/87- EP(Vol. IV), dated the 5th July, 1989 and registered under the Societies Registration Act, 1860;

21 of 1860.

(m) “energy manager” means any individual possessing the qualifications prescribed under clause (m) of section 14;

(n) “Governing Council” means the Governing Council referred to in section 4;

(o) “member” means the member of the Governing Council and includes the Chairperson;

(p) “notification” means a notification in the Gazette of India or, as the case may be, the Official Gazette of a State;

(q) “prescribed” means prescribed by rules made under this Act;

(r) “regulations” means regulations made by the Bureau under this Act;

(s) “Schedule” means the Schedule to this Act;

(t) “State Commission” means the State Electricity Regulatory Commission established under sub-section (1) of section 17 of the Electricity Regulatory Commissions Act, 1998;

14 of 1998.

9 of 1910.
54 of 1948.
14 of 1998.

(u) words and expressions used and not defined in this Act but defined in the Indian Electricity Act, 1910 or the Electricity (Supply) Act, 1948 or the Electricity Regulatory Commissions Act, 1998 shall have the meanings respectively assigned to them in those Acts.

CHAPTER II

BUREAU OF ENERGY EFFICIENCY

3. (1) With effect from such date as the Central Government may, by notification, appoint, there shall be established, for the purposes of this Act, a Bureau to be called the Bureau of Energy Efficiency.

Establishment
and incorpora-
tion of Bureau
of Energy
Efficiency.

(2) The Bureau shall be a body corporate by the name aforesaid having perpetual succession and a common seal, with power subject to the provisions of this Act, to acquire, hold and dispose of property, both movable and immovable, and to contract, and shall, by the said name, sue or be sued.

(3) The head office of the Bureau shall be at Delhi.

(4) The Bureau may establish offices at other places in India.

4. (1) The general superintendence, direction and management of the affairs of the Bureau shall vest in the Governing Council which shall consist of not less than twenty, but not exceeding twenty-six, members to be appointed by the Central Government.

Management
of Bureau.

(2) The Governing Council shall consist of the following members, namely:—

- (a) the Minister in charge of the Ministry or Department of the Central Government dealing with the Power *ex officio* Chairperson;
- (b) the Secretary to the Government of India, in charge of the Ministry or Department of the Central Government dealing with the Power *ex officio* member;
- (c) the Secretary to the Government of India, in charge of the Ministry or Department of the Central Government dealing with the Petroleum and Natural Gas *ex officio* member;
- (d) the Secretary to the Government of India, in charge of the Ministry or Department of the Central Government dealing with the Coal *ex officio* member;
- (e) the Secretary to the Government of India, in charge of the Ministry or Department of the Central Government dealing with the Non-conventional Energy Sources *ex officio* member;
- (f) the Secretary to the Government of India, in charge of the Ministry or Department of the Central Government dealing with the Atomic Energy *ex officio* member;
- (g) the Secretary to the Government of India, in charge of the Ministry or Department of the Central Government dealing with the Consumer Affairs *ex officio* member;
- (h) Chairman of the Central Electricity Authority established under the Electricity (Supply) Act, 1948 *ex officio* member;
- (i) Director-General of the Central Power Research Institute registered under the Karnataka Societies Act, 1960 *ex officio* member;
- (j) Executive Director of the Petroleum Conservation Research Association, a society registered under the Societies Registration Act, 1860 *ex officio* member;
- (k) Chairman-cum-Managing Director of the Central Mine Planning and Design Institute Limited, a company incorporated under the Companies Act, 1956 *ex officio* member;

54 of 1948.

Karnataka
Act 17 of 1960.

XXI of
1860.

1 of 1956.

- (l) Director-General of the Bureau of Indian Standards established under the Bureau of Indian Standards Act, 1986 *ex officio* member; 63 of 1986.
- (m) Director-General of the National Test House, Department of Supply, Ministry of Commerce and Industry, Kolkata *ex officio* member;
- (n) Managing Director of the Indian Renewable Energy Development Agency Limited, a company incorporated under the Companies Act, 1956 *ex officio* member; 1 of 1956.
- (o) one member each from the five power regions representing the States of the region to be appointed by the Central Government members;
- (p) such number of persons, not exceeding four as may be prescribed, to be appointed by the Central Government as members from amongst persons who are in the opinion of the Central Government capable of representing industry, equipment and appliance manufacturers, architects and consumers members;
- (q) such number of persons, not exceeding two as may be nominated by the Governing Council as members members;
- (r) Director-General of Bureau *ex officio* member-secretary.

(3) The Governing Council may exercise all powers and do all acts and things which may be exercised or done by the Bureau.

(4) Every member referred to in clauses (o), (p) and (q) of sub-section (2) shall hold office for a term of three years from the date on which he enters upon his office.

(5) The fee and allowances to be paid to the members referred to in clauses (o), (p) and (q) of sub-section (2) and the manner of filling up of vacancies and the procedure to be followed in the discharge of their functions shall be such as may be prescribed.

Meetings of
Governing
Council.

5. (1) The Governing Council shall meet at such times and places, and shall observe such rules of procedure in regard to the transaction of business at its meetings (including quorum at such meetings) as may be provided by regulations.

(2) The Chairperson or, if for any reason, he is unable to attend a meeting of the Governing Council, any other member chosen by the members present from amongst themselves at the meeting shall preside at the meeting.

(3) All questions which come up before any meeting of the Governing Council shall be decided by a majority vote of the members present and voting, and in the event of an equality of votes, the Chairperson or in his absence, the person presiding, shall have a second or casting vote.

Vacancies, etc.,
not to
invalidate
proceedings of
Bureau,
Governing
Council or
Committee.

6. No act or proceeding of the Bureau or the Governing Council or any Committee shall be invalid merely by reason of—

(a) any vacancy in, or any defect in the constitution of, the Bureau or the Governing Council or the Committee; or

(b) any defect in the appointment of a person acting as a Director-General or Secretary of the Bureau or a member of the Governing Council or the Committee; or

(c) any irregularity in the procedure of the Bureau or the Governing Council or the Committee not affecting the merits of the case.

Removal of
member from
office.

7. The Central Government shall remove a member referred to in clauses (o), (p) and (q) of sub-section (2) of section 4 from office if he—

(a) is, or at any time has been, adjudicated as insolvent;

(b) is of unsound mind and stands so declared by a competent court;

(c) has been convicted of an offence which, in the opinion of the Central Government, involves a moral turpitude;

(d) has, in the opinion of the Central Government, so abused his position as to render his continuation in office detrimental to the public interest;

Provided that no member shall be removed under this clause unless he has been given a reasonable opportunity of being heard in the matter.

8. (1) Subject to any regulations made in this behalf, the Bureau shall, within six months from the date of commencement of this Act, constitute Advisory Committees for the efficient discharge of its functions.

Constitution of
Advisory
Committees
and other
committees.

(2) Each Advisory Committee shall consist of a Chairperson and such other members as may be determined by regulations.

(3) Without prejudice to the powers contained in sub-section (1), the Bureau may constitute, such number of technical committees of experts for the formulation of energy consumption standards or norms in respect of equipment or processes, as it considers necessary.

9. (1) The Central Government shall, by notification, appoint a Director-General from amongst persons of ability and standing, having adequate knowledge and experience in dealing with the matters relating to energy production, supply and energy management, standardisation and efficient use of energy and its conservation.

Director-
General of
Bureau.

(2) The Central Government shall, by notification, appoint any person not below the rank of Deputy Secretary to the Government of India as Secretary of the Bureau.

(3) The Director-General shall hold office for a term of three years from the date on which he enters upon his office or until he attains the age of sixty years, whichever is earlier.

(4) The salary and allowances payable to the Director-General and other terms and conditions of his service and other terms and conditions of service of the Secretary of the Bureau shall be such as may be prescribed.

(5) Subject to general superintendence, direction and management of the affairs by the Governing Council, the Director-General of the Bureau shall be the Chief Executive Authority of the Bureau.

(6) The Director-General of the Bureau shall exercise and discharge such powers and duties of the Bureau as may be determined by regulations.

10. (1) The Central Government may appoint such other officers and employees in the Bureau as it considers necessary for the efficient discharge of its functions under this Act.

Officers and
employees of
Bureau.

(2) The terms and conditions of service of officers and other employees of the Bureau appointed under sub-section (1) shall be such as may be prescribed.

11. All orders and decisions of the Bureau shall be authenticated by the signature of the Director-General or any other officer of the Bureau authorised by the Director-General in this behalf.

Authentication
of orders and
decisions of
Bureau.

CHAPTER III

TRANSFER OF ASSETS, LIABILITIES, ETC., OF ENERGY MANAGEMENT CENTRE TO BUREAU

12. (1) On and from the date of establishment of the Bureau—

(a) any reference to the Energy Management Centre in any law other than this Act or in any contract or other instrument shall be deemed as a reference to the Bureau;

(b) all properties and assets, movable and immovable of, or belonging to, the Energy Management Centre shall vest in the Bureau;

(c) all the rights and liabilities of the Energy Management Centre shall be transferred to, and be the rights and liabilities of, the Bureau;

Transfer of
assets,
liabilities and
employees of
Energy
Management
Centre.

(d) without prejudice to the provisions of clause (c), all debts, obligations and liabilities incurred, all contracts entered into and all matters and things engaged to be done by, with or for the Energy Management Centre immediately before that date, for or in connection with the purposes of the said Centre shall be deemed to have been incurred, entered into, or engaged to be done by, with or for, the Bureau;

(e) all sums of money due to the Energy Management Centre immediately before that date shall be deemed to be due to the Bureau;

(f) all suits and other legal proceedings instituted or which could have been instituted by or against the Energy Management Centre immediately before that date may be continued or may be instituted by or against the Bureau; and

(g) every employee holding any office under the Energy Management Centre immediately before that date shall hold his office in the Bureau by the same tenure and upon the same terms and conditions of service as respects remuneration, leave, provident fund, retirement or other terminal benefits as he would have held such office if the Bureau had not been established and shall continue to do so as an employee of the Bureau or until the expiry of six months from that date if such employee opts not to be the employee of the Bureau within such period.

(2) Notwithstanding anything contained in the Industrial Disputes Act, 1947 or in any other law for the time being in force, the absorption of any employee by the Bureau in its regular service under this section shall not entitle such employee to any compensation under that Act or other law and no such claim shall be entertained by any court, tribunal or other authority. 14 of 1947.

CHAPTER IV

POWERS AND FUNCTIONS OF BUREAU

Powers and
functions of
Bureau.

13. (1) The Bureau shall, effectively co-ordinate with designated consumers, designated agencies and other agencies, recognise and utilise the existing resources and infrastructure, in performing the functions assigned to it by or under this Act.

(2) The Bureau may perform such functions and exercise such powers as may be assigned to it by or under this Act and in particular, such functions and powers include the function and power to—

(a) recommend to the Central Government the norms for processes and energy consumption standards required to be notified under clause (a) of section 14;

(b) recommend to the Central Government the particulars required to be displayed on label on equipment or on appliances and manner of their display under clause (d) of section 14;

(c) recommend to the Central Government for notifying any user or class of users of energy as a designated consumer under clause (e) of section 14;

(d) take suitable steps to prescribe guidelines for energy conservation building codes under clause (p) of section 14;

(e) take all measures necessary to create awareness and disseminate information for efficient use of energy and its conservation;

(f) arrange and organise training of personnel and specialists in the techniques for efficient use of energy and its conservation;

(g) strengthen consultancy services in the field of energy conservation;

(h) promote research and development in the field of energy conservation;

(i) develop testing and certification procedure and promote testing facilities for certification and testing for energy consumption of equipment and appliances;

(j) formulate and facilitate implementation of pilot projects and demonstration projects for promotion of efficient use of energy and its conservation;

(k) promote use of energy efficient processes, equipment, devices and systems;

(l) promote innovative financing of energy efficiency projects;

(m) give financial assistance to institutions for promoting efficient use of energy and its conservation;

(n) levy fee, as may be determined by regulations, for services provided for promoting efficient use of energy and its conservation;

(o) maintain a list of accredited energy auditors as may be specified by regulations;

(p) specify, by regulations, qualifications for the accredited energy auditors;

(q) specify, by regulations, the manner and intervals of time in which the energy audit shall be conducted;

(r) specify, by regulations, certification procedures for energy managers to be designated or appointed by designated consumers;

(s) prepare educational curriculum on efficient use of energy and its conservation for educational institutions, boards, universities or autonomous bodies and coordinate with them for inclusion of such curriculum in their syllabus;

(t) implement international co-operation programmes relating to efficient use of energy and its conservation as may be assigned to it by the Central Government;

(u) perform such other functions as may be prescribed.

CHAPTER V

POWER OF CENTRAL GOVERNMENT TO FACILITATE AND ENFORCE EFFICIENT USE OF ENERGY AND ITS CONSERVATION

14. The Central Government may, by notification, in consultation with the Bureau,—

(a) specify the norms for processes and energy consumption standards for any equipment, appliance which consumes, generates, transmits or supplies energy;

(b) specify equipment or appliance or class of equipments or appliances, as the case may be, for the purposes of this Act;

(c) prohibit manufacture or sale or purchase or import of equipment or appliance specified under clause (b), unless such equipment or appliance conforms to energy consumption standards:

Provided that no notification prohibiting manufacture or sale or purchase or import of equipment or appliance shall be issued within two years from the date of notification issued under clause (a) of this section;

(d) direct display of such particulars on label on equipment or on appliance specified under clause (b) and in such manner as may be specified by regulations;

(e) specify, having regard to the intensity or quantity of energy consumed and the amount of investment required for switching over to energy efficient equipments and capacity of industry to invest in it and availability of the energy efficient machinery and equipment required by the industry, any user or class of users of energy as a designated consumer for the purposes of this Act;

(f) alter the list of Energy Intensive Industries specified in the Schedule;

(g) establish and prescribe such energy consumption norms and standards for designated consumers as it may consider necessary:

Provided that the Central Government may prescribe different norms and standards for different designated consumers having regard to such factors as may be prescribed;

(h) direct, having regard to quantity of energy consumed or the norms and standards of energy consumption specified under clause (a), the Energy Intensive Industries specified in the Schedule to get energy audit conducted by an accredited

Power of
Central
Government to
enforce
efficient use of
energy and its
conservation.

energy auditor in such manner and intervals of time as may be specified by regulations;

(i) direct, if considered necessary for efficient use of energy and its conservation, any designated consumer to get energy audit conducted by an accredited energy auditor;

(j) specify the matters to be included for the purposes of inspection under sub-section (2) of section 17;

(k) direct any designated consumer to furnish to the designated agency, in such form and manner and within such period, as may be prescribed, the information with regard to the energy consumed and action taken on the recommendation of the accredited energy auditor;

(l) direct any designated consumer to designate or appoint energy manager in charge of activities for efficient use of energy and its conservation and submit a report, in the form and manner as may be prescribed, on the status of energy consumption at the end of every financial year to the designated agency;

(m) prescribe minimum qualification for energy managers to be designated or appointed under clause (l);

(n) direct every designated consumer to comply with energy consumption norms and standards;

(o) direct any designated consumer, who does not fulfil the energy consumption norms and standards prescribed under clause (g), to prepare a scheme for efficient use of energy and its conservation and implement such scheme keeping in view the economic viability of the investment in such form and manner as may be prescribed;

(p) prescribe energy conservation building codes for efficient use of energy and its conservation in the building or building complex;

(q) amend the energy conservation building codes to suit the regional and local climatic conditions;

(r) direct every owner or occupier of the building or building complex, being a designated consumer to comply with the provisions of energy conservation building codes for efficient use of energy and its conservation;

(s) direct, any designated consumer referred to in clause (r), if considered necessary, for efficient use of energy and its conservation in his building to get energy audit conducted in respect of such building by an accredited energy auditor in such manner and intervals of time as may be specified by regulations;

(t) take all measures necessary to create awareness and disseminate information for efficient use of energy and its conservation;

(u) arrange and organise training of personnel and specialists in the techniques for efficient use of energy and its conservation;

(v) take steps to encourage preferential treatment for use of energy efficient equipment or appliances;

Provided that the powers under clauses (p) to (s) shall be exercised in consultation with the concerned State.

CHAPTER VI

POWER OF STATE GOVERNMENT TO FACILITATE AND ENFORCE EFFICIENT USE OF ENERGY AND ITS CONSERVATION

Power of State Government to enforce certain provisions for efficient use of energy and its conservation.

15. The State Government may, by notification, in consultation with the Bureau—

(a) amend the energy conservation building codes to suit the regional and local climatic conditions and may, by rules made by it, specify and notify energy conservation building codes with respect to use of energy in the buildings;

(b) direct every owner or occupier of a building or building complex being a

designated consumer to comply with the provisions of the energy conservation building codes;

(c) direct, if considered necessary for efficient use of energy and its conservation, any designated consumer referred to in clause (b) to get energy audit conducted by an accredited energy auditor in such manner and at such intervals of time as may be specified by regulations;

(d) designate any agency as designated agency to coordinate, regulate and enforce provisions of this Act within the State;

(e) take all measures necessary to create awareness and disseminate information for efficient use of energy and its conservation;

(f) arrange and organise training of personnel and specialists in the techniques for efficient use of energy and its conservation;

(g) take steps to encourage preferential treatment for use of energy efficient equipment or appliances;

(h) direct, any designated consumer to furnish to the designated agency, in such form and manner and within such period as may be specified by rules made by it, information with regard to the energy consumed by such consumer;

(i) specify the matters to be included for the purposes of inspection under sub-section (2) of section 17.

16. (1) The State Government shall constitute a Fund to be called the State Energy Conservation Fund for the purposes of promotion of efficient use of energy and its conservation within the State.

Establishment
of Fund by
State
Government.

(2) To the Fund shall be credited all grants and loans that may be made by the State Government or, Central Government or any other organisation or individual for the purposes of this Act.

(3) The Fund shall be applied for meeting the expenses incurred for implementing the provisions of this Act.

(4) The Fund created under sub-section (1) shall be administered by such persons or any authority and in such manner as may be specified in the rules made by the State Government.

17. (1) The designated agency may appoint, after the expiry of five years from the date of commencement of this Act, as many inspecting officers as may be necessary for the purpose of ensuring compliance with energy consumption standards specified under clause (a) of section 14 or ensure display of particulars on label on equipment or appliance specified under clause (b) of section 14 or for the purpose of performing such other functions as may be assigned to them.

Power of
inspection.

(2) Subject to any rules made under this Act, an inspecting officer shall have power to—

(a) inspect any operation carried on or in connection with the equipment or appliance specified under clause (b) of section 14 or in respect of which energy standards under clause (a) of section 14 have been specified;

(b) enter any place of designated consumer at which the energy is used for any activity and may require any proprietor, employee, director, manager or secretary or any other person who may be attending in any manner to or helping in, carrying on any activity with the help of energy—

(i) to afford him necessary facility to inspect—

(A) any equipment or appliance as he may require and which may be available at such place;

(B) any production process to ascertain the energy consumption norms and standards;

(ii) to make an inventory of stock of any equipment or appliance checked or verified by him;

(iii) to record the statement of any person which may be useful for, or relevant to, for efficient use of energy and its conservation under this Act.

(3) An inspecting officer may enter any place of designated consumer—

(a) where any activity with the help of energy is carried on; and

(b) where any equipment or appliance notified under clause (b) of section 14 has been kept,

during the hours at which such place is open for production or conduct of business connected therewith.

(4) An inspecting officer acting under this section shall, on no account, remove or cause to be removed from the place wherein he has entered, any equipment or appliance or books of account or other documents.

Power of
Central
Government or
State
Government to
issue
directions.

18. The Central Government or the State Government may, in the exercise of its powers and performance of its functions under this Act and for efficient use of energy and its conservation, issue such directions in writing as it deems fit for the purposes of this Act to any person, officer, authority or any designated consumer and such person, officer or authority or any designated consumer shall be bound to comply with such directions.

Explanation.—For the avoidance of doubts, it is hereby declared that the power to issue directions under this section includes the power to direct—

(a) regulation of norms for process and energy consumption standards in any industry or building or building complex; or

(b) regulation of the energy consumption standards for equipment and appliances.

CHAPTER VII

FINANCE, ACCOUNTS AND AUDIT OF BUREAU

Grants and
loans by
Central
Government.

19. The Central Government may, after due appropriation made by Parliament by law in this behalf, make to the Bureau or to the State Governments grants and loans of such sums of money as the Central Government may consider necessary.

Establishment
of Fund by
Central
Government.

20. (1) There shall be constituted a Fund to be called as the Central Energy Conservation Fund and there shall be credited thereto—

(a) any grants and loans made to the Bureau by the Central Government under section 19;

(b) all fees received by the Bureau under this Act;

(c) all sums received by the Bureau from such other sources as may be decided upon by the Central Government.

(2) The Fund shall be applied for meeting—

(a) the salary, allowances and other remuneration of Director-General, Secretary, officers and other employees of the Bureau;

(b) expenses of the Bureau in the discharge of its functions under section 13;

(c) fee and allowances to be paid to the members of the Governing Council under sub-section (5) of section 4;

(d) expenses on objects and for purposes authorised by this Act.

Borrowing
powers of
Bureau.

21. (1) The Bureau may, with the consent of the Central Government or in accordance with the terms of any general or special authority given to it by the Central Government, borrow money from any source as it may deem fit for discharging all or any of its functions under this Act.

(2) The Central Government may guarantee, in such manner as it thinks fit, the

repayment of the principal and the payment of interest thereon with respect to the loans borrowed by the Bureau under sub-section (1).

22. The Bureau shall prepare, in such form and at such time in each financial year as may be prescribed, its budget for the next financial year, showing the estimated receipts and expenditure of the Bureau and forward the same to the Central Government.

Budget.

23. The Bureau shall prepare, in such form and at such time in each financial year as may be prescribed, its annual report, giving a full account of its activities during the previous financial year, and submit a copy thereof to the Central Government.

Annual report.

24. The Central Government shall cause the annual report referred to in section 23 to be laid, as soon as may be after it is received, before each House of Parliament.

Annual report to be laid before Parliament.

25. (1) The Bureau shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the Central Government in consultation with the Comptroller and Auditor-General of India.

Accounts and audit.

(2) The accounts of the Bureau shall be audited by the Comptroller and Auditor-General of India at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the Bureau to the Comptroller and Auditor-General.

(3) The Comptroller and Auditor-General of India and any other person appointed by him in connection with the audit of the accounts of the Bureau shall have the same rights and privileges and authority in connection with such audit as the Comptroller and Auditor-General generally has in connection with the audit of the Government accounts, and in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the Bureau.

(4) The accounts of the Bureau as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf together with the audit report thereon shall be forwarded annually to the Central Government and that Government shall cause the same to be laid before each House of Parliament.

CHAPTER VIII

PENALTIES AND ADJUDICATION

26. (1) If any person fails to comply with the provisions of clause (c) or clause (d) or clause (h) or clause (i) or clause (k) or clause (l) or clause (n) or clause (r) or clause (s) of section 14 or clause (b) or clause (c) or clause (h) of section 15, he shall be liable to a penalty which shall not exceed ten thousand rupees for each such failure and, in the case of continuing failure, with an additional penalty which may extend to one thousand rupees for every day during which such failure continues:

Penalty.

Provided that no person shall be liable to pay penalty within five years from the date of commencement of this Act.

(2) Any amount payable under this section, if not paid, may be recovered as if it were an arrear of land revenue.

27. (1) For the purpose of adjudging under section 26, the State Commission shall appoint any of its members to be an adjudicating officer for holding an inquiry in such manner as may be prescribed by the Central Government, after giving any person concerned a reasonable opportunity of being heard for the purpose of imposing any penalty.

Power to adjudicate.

(2) While holding an inquiry, the adjudicating officer shall have power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or produce any document which in the opinion of the adjudicating officer, may be useful for or relevant to the subject-matter of the inquiry, and if, on such inquiry, he is satisfied that the person has failed to comply with the provisions of any of the clauses of the sections specified in section 26, he may impose such penalty as he thinks fit in accordance with the provisions of any of those clauses of that section:

Provided that where a State Commission has not been established in a State, the Government of that State shall appoint any of its officer not below the rank equivalent to a

Secretary dealing with legal affairs in that State to be an adjudicating officer for the purposes of this section and such officer shall cease to be an adjudicating officer immediately on the appointment of an adjudicating officer by the State Commission on its establishment in that State:

Provided further that where an adjudicating officer appointed by a State Government ceased to be an adjudicating officer, he shall transfer to the adjudicating officer appointed by the State Commission all matters being adjudicated by him and thereafter the adjudicating officer appointed by the State Commission shall adjudicate the penalties on such matters.

Factors to be taken into account by adjudicating officer.

28. While adjudicating the quantum of penalty under section 26, the adjudicating officer shall have due regard to the following factors, namely:—

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

(b) the repetitive nature of the default.

Civil court not to have jurisdiction.

29. No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which an adjudicating officer appointed under this Act or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

CHAPTER IX

APPELLATE TRIBUNAL FOR ENERGY CONSERVATION

Establishment of Appellate Tribunal.

30. The Central Government shall, by notification, establish an Appellate Tribunal to be known as the Appellate Tribunal for Energy Conservation to hear appeals against the orders of the adjudicating officer or the Central Government or the State Government or any other authority under this Act.

Appeal to Appellate Tribunal.

31. (1) Any person aggrieved, by an order made by an adjudicating officer or the Central Government or the State Government or any other authority under this Act, may prefer an appeal to the Appellate Tribunal for Energy Conservation:

Provided that any person, appealing against the order of the adjudicating officer levying any penalty, shall, while filing the appeal, deposit the amount of such penalty:

Provided further that where in any particular case, the Appellate Tribunal is of the opinion that the deposit of such penalty would cause undue hardship to such person, the Appellate Tribunal may dispense with such deposit subject to such conditions as it may deem fit to impose so as to safeguard the realisation of penalty.

(2) Every appeal under sub-section (1) shall be filed within a period of forty-five days from the date on which a copy of the order made by the adjudicating officer or the Central Government or the State Government or any other authority is received by the aggrieved person and it shall be in such form, verified in such manner and be accompanied by such fee as may be prescribed:

Provided that the Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days if it is satisfied that there was sufficient cause for not filing it within that period.

(3) On receipt of an appeal under sub-section (1), the Appellate Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.

(4) The Appellate Tribunal shall send a copy of every order made by it to the parties

to the appeal and to the concerned adjudicating officer or the Central Government or the State Government or any other authority.

(5) The appeal filed before the Appellate Tribunal under sub-section (1) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal finally within one hundred and eighty days from the date of receipt of the appeal:

Provided that where an appeal could not be disposed of within the said period of one hundred and eighty days, the Appellate Tribunal shall record its reasons in writing for not disposing of the appeal within the said period.

(6) The Appellate Tribunal may, for the purpose of examining the legality, propriety or correctness of any order made by the adjudicating officer or the Central Government or the State Government or any other authority under this Act, as the case may be, in relation to any proceeding, on its own motion or otherwise, call for the records of such proceedings and make such order in the case as it thinks fit.

32. (1) The Appellate Tribunal shall consist of a Chairperson and such number of Members not exceeding four, as the Central Government may deem fit.

Composition of
Appellate
Tribunal.

(2) Subject to the provisions of this Act,—

(a) the jurisdiction of the Appellate Tribunal may be exercised by Benches thereof;

(b) a Bench may be constituted by the Chairperson of the Appellate Tribunal with two or more Members of the Appellate Tribunal as the Chairperson of the Appellate Tribunal may deem fit:

Provided that every Bench constituted under this clause shall include at least one Judicial Member and one Technical Member;

(c) The Benches of the Appellate Tribunal shall ordinarily sit at Delhi and such other places as the Central Government may, in consultation with the Chairperson of the Appellate Tribunal, notify;

(d) the Central Government shall notify the areas in relation to which each Bench of the Appellate Tribunal may exercise jurisdiction.

(3) Notwithstanding anything contained in sub-section (2), the Chairperson of the Appellate Tribunal may transfer a Member of the Appellate Tribunal from one Bench to another Bench.

Explanation.—For the purposes of this Chapter,—

(i) “Judicial Member” means a Member of the Appellate Tribunal appointed as such under item (i) or item (ii) of clause (b) of sub-section (1) of section 33, and includes the Chairperson of the Appellate Tribunal;

(ii) “Technical Member” means a Member of the Appellate Tribunal appointed as such under item (iii) or item (iv) or item (v) or item (vi) of clause (b) of sub-section (1) of section 33.

33. (1) A person shall not be qualified for appointment as the Chairperson of the Appellate Tribunal or a Member of the Appellate Tribunal unless he,—

Qualifications
for appoint-
ment of
Chairperson
and Members
of Appellate
Tribunal.

(a) in the case of Chairperson of the Appellate Tribunal, is, or has been, a judge of the Supreme Court or the Chief Justice of a High Court; and

(b) in the case of a Member of the Appellate Tribunal,—

(i) is, or has been, or is qualified to be, a Judge of a High Court; or

(ii) is, or has been, a Member of the Indian Legal Service and has held a post in Grade I in that service for at least three years; or

(iii) is, or has been, a Secretary for at least one year in the Ministry or Department of the Central Government dealing with the Power or Coal or Petroleum and Natural Gas or Atomic Energy; or

(iv) is, or has been the Chairman of the Central Electricity Authority for at least one year; or

(v) is, or has been, Director-General of Bureau or Director-General of the Central Power Research Institute or Bureau of Indian Standards for at least three years or has held any equivalent post for at least three years; or

(vi) is, or has been, a qualified technical person of ability and standing, having adequate knowledge and experience in dealing with the matters relating to energy, production and supply, energy management, standardisation and efficient use of energy and its conservation, and has shown capacity in dealing with problems relating to engineering, finance, commerce, economics, law or management.

Term of office.

34. The Chairperson of the Appellate Tribunal and every Member of the Appellate Tribunal shall hold office as such for a term of five years from the date on which he enters upon his office:

Provided that no Chairperson of the Appellate Tribunal or Member of the Appellate Tribunal shall hold office as such after he has attained,—

(a) in the case of the Chairperson of the Appellate Tribunal, the age of seventy years;

(b) in the case of any Member of the Appellate Tribunal, the age of sixty-five years.

Terms and conditions of service.

35. The salary and allowances payable to and the other terms and conditions of service of the Chairperson of the Appellate Tribunal and Members of the Appellate Tribunal shall be such as may be prescribed:

Provided that neither the salary and allowances nor the other terms and conditions of service of the Chairperson of the Appellate Tribunal or a Member of the Appellate Tribunal shall be varied to his disadvantage after appointment.

Vacancies.

36. If, for reason, other than temporary absence, any vacancy occurs in the office of the Chairperson of the Appellate Tribunal or a Member of the Appellate Tribunal, the Central Government shall appoint another person in accordance with the provisions of this Act to fill the vacancy and the proceedings may be continued before the Appellate Tribunal from the stage at which the vacancy is filled.

Resignation and removal.

37. (1) The Chairperson or a Member of the Appellate Tribunal may, by notice in writing under his hand addressed to the Central Government, resign his office:

Provided that the Chairperson of the Appellate Tribunal or a Member of the Appellate Tribunal shall, unless he is permitted by the Central Government to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is the earliest.

(2) The Chairperson of the Appellate Tribunal or Member of the Appellate Tribunal shall not be removed from his office except by an order by the Central Government on the ground of proved misbehaviour or incapacity after an inquiry made by such person as the President may appoint for this purpose in which the Chairperson or a Member of the Appellate Tribunal concerned has been informed of the charges against him and given a reasonable opportunity of being heard in respect of such charges.

38. (1) In the event of the occurrence of any vacancy in the office of the Chairperson of the Appellate Tribunal by reason of his death, resignation or otherwise, the senior-most Member of the Appellate Tribunal shall act as the Chairperson of the Appellate Tribunal until the date on which a new Chairperson, appointed in accordance with the provisions of this Act to fill such vacancy, enters upon his office.

Member to act
as Chairperson
in certain
circumstances.

(2) When the Chairperson of the Appellate Tribunal is unable to discharge his functions owing to absence, illness or any other cause, the senior-most Member of the Appellate Tribunal shall discharge the functions of the Chairperson of the Appellate Tribunal until the date on which the Chairperson of the Appellate Tribunal resumes his duties.

39. (1) The Central Government shall provide the Appellate Tribunal with such officers and employees as it may deem fit.

Staff of
Appellate
Tribunal.

(2) The officers and employees of the Appellate Tribunal shall discharge their functions under the general superintendence of the Chairperson of the Appellate Tribunal, as the case may be.

(3) The salaries and allowances and other conditions of service of the officers and employees of the Appellate Tribunal shall be such as may be prescribed.

5 of 1908. 40. (1) The Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 but shall be guided by the principles of natural justice and, subject to the other provisions of this Act, the Appellate Tribunal shall have powers to regulate its own procedure.

Procedure and
powers of
Appellate
Tribunal.

5 of 1908. (2) The Appellate Tribunal shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

1 of 1872. (d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872, requisitioning any public record or document or copy of such record or document from any office;

(e) issuing commissions for the examination of witnesses or documents;

(f) reviewing its decisions;

(g) dismissing a representation of default or deciding it, *ex parte*;

(h) setting aside any order of dismissal or any representation for default or any order passed by it, *ex parte*;

(i) any other matter which may be prescribed by the Central Government.

(3) An order made by the Appellate Tribunal under this Act shall be executable by the Appellate Tribunal as a decree of civil court and, for this purpose, the Appellate Tribunal shall have all the powers of a civil court.

(4) Notwithstanding anything contained in sub-section (3), the Appellate Tribunal may transmit any order made by it to a civil court having local jurisdiction and such civil court shall execute the order as if it were a decree made by that court.

45 of 1860. (5) All proceedings before the Appellate Tribunal shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Indian Penal Code and the Appellate Tribunal shall be deemed to be a civil court for the purposes of sections 345 and 346 of the Code of Criminal Procedure, 1973.

2 of 1974.

Distribution of
business
amongst
Benches.

41. Where Benches are constituted, the Chairperson of the Appellate Tribunal may, from time to time, by notification, make provisions as to the distribution of the business of the Appellate Tribunal amongst the Benches and also provide for the matters which may be dealt with by each Bench.

Power of
Chairperson to
transfer cases.

42. On the application of any of the parties and after notice to the parties, and after hearing such of them as he may desire to be heard, or on his own motion without such notice, the Chairperson of the Appellate Tribunal may transfer any case pending before one Bench for disposal, to any other Bench.

Decision to be
by majority.

43. If the Members of the Appellate Tribunal of a Bench consisting of two Members differ in opinion on any point, they shall state the point or points on which they differ, and make a reference to the Chairperson of the Appellate Tribunal who shall either hear the point or points himself or refer the case for hearing on such point or points by one or more of the other Members of the Appellate Tribunal and such point or points shall be decided according to the opinion of the majority of the Members of the Appellate Tribunal who have heard the case, including those who first heard it.

Right of appel-
lant to take as-
sistance of legal
practitioner or
accredited audi-
tor and of Gov-
ernment to ap-
point presenting
officers.

44. (1) A person preferring an appeal to the Appellate Tribunal under this Act may either appear in person or take the assistance of a legal practitioner or an accredited energy auditor of his choice to present his case before the Appellate Tribunal, as the case may be.

(2) The Central Government or the State Government may authorise one or more legal practitioners or any of its officers to act as presenting officers and every person so authorised may present the case with respect to any appeal before the Appellate Tribunal, as the case may be.

Appeal to
Supreme Court.

45. Any person aggrieved by any decision or order of the Appellate Tribunal, may, file an appeal to the Supreme Court within sixty days from the date of communication of the decision or order of the Appellate Tribunal to him, on any one or more of the grounds specified in section 100 of the Code of Civil Procedure, 1908:

5 of 1908.

Provided that the Supreme Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days.

CHAPTER X

MISCELLANEOUS

Power of
Central
Government
to issue
directions to
Bureau.

46. (1) Without prejudice to the foregoing provisions of this Act, the Bureau shall, in exercise of its powers or the performance of its functions under this Act, be bound by such directions on questions of policy as the Central Government may give in writing to it from time to time:

Provided that the Bureau shall, as far as practicable, be given an opportunity to express its views before any direction is given under this sub-section.

(2) The decision of the Central Government, whether a question is one of policy or not, shall be final.

Power of
Central
Government to
supersede
Bureau.

47. (1) If at any time the Central Government is of opinion—

(a) that on account of grave emergency, the Bureau is unable to discharge the functions and duties imposed on it by or under the provisions of this Act; or

(b) that the Bureau has persistently made default in complying with any direction issued by the Central Government under this Act or in discharge of the functions and duties imposed on it by or under the provisions of this Act and as a result of such default, the financial position of the Bureau had deteriorated or the administration of the Bureau had deteriorated; or

(c) that circumstances exist which render it necessary in the public interest to do,

the Central Government may, by notification, supersede the Bureau for such period, not exceeding six months, as may be specified in the notification.

(2) Upon the publication of a notification under sub-section (1) superseding the Bureau,—

(a) all the members referred to in clauses (o), (p) and (q) of sub-section (2) of section 4 shall, as from the date of supersession, vacate their offices as such;

(b) all the powers, functions and duties which may, by or under the provisions of this Act, be exercised or discharged by or on behalf of the Bureau, shall until the Bureau is reconstituted under sub-section (3), be exercised and discharged by such person or persons as the Central Government may direct; and

(c) all property owned or controlled by the Bureau shall, until the Bureau is reconstituted under sub-section (3), vest in the Central Government.

(3) On the expiration of the period of supersession specified in the notification issued under sub-section (1), the Central Government may reconstitute the Bureau by a fresh appointment and in such case any person or persons who vacated their offices under clause (a) of sub-section (2), shall not be deemed disqualified for appointment:

Provided that the Central Government may, at any time, before the expiration of the period of supersession, take action under this sub-section.

(4) The Central Government shall cause a notification issued under sub-section (1) and a full report of any action taken under this section and the circumstances leading to such action to be laid before each House of Parliament at the earliest.

48. (1) Where a company makes a default in complying with the provisions of clause (c) or clause (d) or clause (h) or clause (i) or clause (k) or clause (l) or clause (n) or clause (r) or clause (s) of section 14 or clause (b) or clause (c) or clause (h) of section 15, every person who at the time of such contravention was incharge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to have acted in contravention of the said provisions and shall be liable to be proceeded against and imposed penalty under section 26 accordingly:

Default by companies.

Provided that nothing contained in this sub-section shall render any such person liable for penalty provided in this Act if he proves that the contravention of the aforesaid provisions was committed without his knowledge or that he exercised all due diligence to prevent the contravention of the aforesaid provision.

(2) Notwithstanding anything contained in sub-section (1), where any contravention of the provisions of clause (c) or clause (d) or clause (h) or clause (i) or clause (k) or clause (l) or clause (n) or clause (r) or clause (s) of section 14 or clause (b) or clause (c) or clause (h) of section 15 has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to have contravened the said provisions and shall be liable to be proceeded for imposition of penalty accordingly.

Explanation.—For the purposes of this section, “company” means a body corporate and includes a firm or other association of individuals.

43 of 1961. 49. Notwithstanding anything contained in the Income-tax Act, 1961 or any other enactment for the time being in force relating to tax on income, profits or gains—

(a) the Bureau;

(b) the existing Energy Management Centre from the date of its constitution to the date of establishment of the Bureau,

Exemption from tax on income.

shall not be liable to pay any income-tax or any tax in respect of their income, profits or gains derived.

Protection of
action taken in
good faith.

50. No suit, prosecution or other legal proceeding shall lie against the Central Government or Director-General or Secretary or State Government or any officer of those Governments or State Commission or its members or any member or officer or other employee of the Bureau for anything which is in good faith done or intended to be done under this Act or the rules or regulations made thereunder.

Delegation.

51. The Bureau may, by general or special order in writing, delegate to any member, member of the committee, officer of the Bureau or any other person subject to such conditions, if any, as may be specified in the order, such of its powers and functions under this Act (except the powers under section 58) as it may deem necessary.

Power to obtain
information.

52. Every designated consumer or manufacturer of equipment or appliance specified under clause (b) of section 14 shall supply the Bureau with such information, and with such samples of any material or substance used in relation to any equipment or appliance, as the Bureau may require.

Power to
exempt.

53. If the Central Government or the State Government is of the opinion that it is necessary or expedient so to do in the public interest, it may, by notification and subject to such conditions as may be specified in the notification, exempt any designated consumer or class of designated consumers from application of all or any of the provisions of this Act:

Provided that the Central Government or the State Government, as the case may be, shall not grant exemption to any designated consumer or class of designated consumers for a period exceeding five years:

Provided further that the Central Government or the State Government, as the case may be, shall consult the Bureau of Energy Efficiency before granting such exemption.

Chairperson,
Members, offi-
cers and em-
ployees of the
Appellate Tri-
bunal, Mem-
bers of State
Commission,
Director-Gen-
eral, Secretary,
members,
officers and
employees of
the Bureau to
be public ser-
vants.

54. The Chairperson of the Appellate Tribunal or the Members of the Appellate Tribunal or officers or employees of the Appellate Tribunal or the members of the State Commission or the members, Director-General, Secretary, officers and other employees of the Bureau shall be deemed, when acting or purporting to act in pursuance of any of the provisions of this Act, to be public servants within the meaning of section 21 of the Indian Penal Code.

45 of 1860.

Power of
Central
Government
to issue
directions.

55. The Central Government may give directions to a State Government or the Bureau as to carrying out into execution of this Act in the State.

Power of
Central
Government to
make rules.

56. (1) The Central Government may, by notification, make rules for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) such number of persons to be appointed as members by the Central Government under clauses (o), (p) and (q) of sub-section (2) of section 4;

(b) the fee and allowances to be paid to the members under sub-section (5) of section 4;

(c) the salary and allowances payable to the Director-General and other terms and conditions of his service and other terms and conditions of service of the Secretary of the Bureau under sub-section (4) of section 9;

(d) the terms and conditions of service of officers and other employees of the Bureau under sub-section (2) of section 10;

(e) performing such other functions by the Bureau, as may be prescribed, under clause (u) of sub-section (2) of section 13;

(f) the energy consumption norms and standards for designated consumers under clause (g) of section 14;

(g) prescribing the different norms and standards for different designated consumers under the proviso to clause (g) of section 14;

(h) the form and manner and the time within which information with regard to energy consumed and the action taken on the recommendations of the accredited energy auditor be furnished under clause (k) of section 14;

(i) the form and manner in which the status of energy consumption be submitted under clause (l) of section 14;

(j) the minimum qualifications for energy managers under clause (m) of section 14;

(k) the form and manner for preparation of scheme and its implementation under clause (o) of section 14;

(l) the energy conservation building codes under clause (p) of section 14;

(m) the matters relating to inspection under sub-section (2) of section 17;

(n) the form in which, and the time at which, the Bureau shall prepare its budget under section 22;

(o) the form in which, and the time at which, the Bureau shall prepare its annual report under section 23;

(p) the form in which the accounts of the Bureau shall be maintained under section 25;

(q) the manner of holding inquiry under sub-section (1) of section 27;

(r) the form and fee for filing appeal under sub-section (2) of section 31;

(s) the salary and allowances payable to and other terms and conditions of service of the Chairperson of the Appellate Tribunal and Members of the Appellate Tribunal under section 35;

(t) the salary and allowances and other conditions of service of the officers and other employees of the Appellate Tribunal under sub-section (3) of section 39;

(u) the additional matters in respect of which the Appellate Tribunal may exercise the powers of a civil court under clause (i) of sub-section (2) of section 40;

(v) any other matter which is to be, or may be, prescribed, or in respect of which provision is to be made, or may be made, by rules.

57. (1) The State Government may, by notification, make rules for carrying out the provisions of this Act and not inconsistent with the rules, if any, made by the Central Government.

Power of State Government to make rules.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) energy conservation building codes under clause (a) of section 15;

(b) the form, the manner and the period within which information with regard to energy consumption shall be furnished under clause (h) of section 15;

(c) the person or any authority who shall administer the Fund and the manner in which the Fund shall be administered under sub-section (4) of section 16;

(d) the matters to be included for the purposes of inspection under sub-section (2) of section 17;

(e) any other matter which is to be, or may be, prescribed, or in respect of which provision is to be made, or may be made, by rules.

Power of
Bureau to
make
regulations.

58. (1) The Bureau may, with the previous approval of the Central Government and subject to the condition of previous publication, by notification, make regulations not inconsistent with the provisions of this Act and the rules made thereunder to carry out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:—

(a) the times and places of the meetings of the Governing Council and the procedure to be followed at such meetings under sub-section (1) of section 5;

(b) the members of advisory committees constituted under sub-section (2) of section 8;

(c) the powers and duties that may be exercised and discharged by the Director-General of the Bureau under sub-section (6) of section 9;

(d) the levy of fee for services provided for promoting efficient use of energy and its conservation under clause (n) of sub-section (2) of section 13;

(e) the list of accredited energy auditors under clause (o) of sub-section (2) of section 13;

(f) the qualifications for accredited energy auditors under clause (p) of sub-section (2) of section 13;

(g) the manner and the intervals of time in which the energy audit shall be conducted under clause (q) of sub-section (2) of section 13;

(h) certification procedure for energy managers under clause (r) of sub-section (2) of section 13;

(i) particulars required to be displayed on label and the manner of their display under clause (d) of section 14;

(j) the manner and the intervals of time for conduct of energy audit under clause (h) or clause (s) of section 14;

(k) the manner and the intervals of time for conducting energy audit by an accredited energy auditor under clause (c) of section 15;

(l) any other matter which is required to be, or may be, specified.

Rules and
regulations to
be laid before
Parliament
and State
Legislature.

59. (1) Every rule made by the Central Government and every regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation, or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.

(2) Every rule made by the State Government shall be laid, as soon as may be after it is made, before each House of the State Legislature where it consists of two Houses, or where such Legislature consists of one House, before that House.

Application of
other laws not
barred.

60. The provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force.

61. The provisions of this Act shall not apply to the Ministry or Department of the Central Government dealing with Defence, Atomic Energy or such other similar Ministries or Departments or undertakings or Boards or institutions under the control of such Ministries or Departments as may be notified by the Central Government.

Provisions of Act not to apply in certain cases.

62. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as may appear to be necessary for removing the difficulty:

Power to remove difficulty.

Provided that no such order shall be made under this section after the expiry of two years from the date of the commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

THE SCHEDULE

[See section 2(s)]

LIST OF ENERGY INTENSIVE INDUSTRIES AND OTHER ESTABLISHMENTS SPECIFIED
AS DESIGNATED CONSUMERS

1. Aluminium;
2. Fertilizers;
3. Iron and Steel;
4. Cement;
5. Pulp and paper;
6. Chlor Alkali;
7. Sugar;
8. Textile;
9. Chemicals;
10. Railways;
11. Port Trust;
12. Transport Sector (industries and services);
13. Petrochemical, Gas Crackers, Naphtha Crackers and Petroleum Refineries;
14. Thermal power stations, hydel power stations, electricity transmission companies and distribution companies;
15. Commercial buildings or establishments.

Sd/-

DR. SUBHASH C. JAIN,
Secretary to the Govt. of India.

By order and in the name of the Governor of Gujarat,

V. M. KOTHARE,
Secretary to Government.

GOVERNMENT CENTRAL PRESS, GANDHINAGAR.



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PART - VI

Acts of Parliament and Ordinances Promulgated by the President

LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT

Sachivalaya, Gandhinagar, 2nd February, 2002..

No. RPB/9/2002/Act-5301/232/E.-The following Act of Parliament is republished for general information:-

GOVERNMENT OF INDIA

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS,
(Legislative Department)

New Delhi, the 30th October, 2001/Kartika 8, 1923 (Saka)

The following Act of Parliament received the assent of the President on the 30th October, 2001 and is hereby published for general information:-

THE PROTECTION OF PLANT VARIETIES AND FARMERS' RIGHTS
ACT, 2001.

(Act No. 53 of 2001)

AN ACT

(30th October, 2001)

to provide for the establishment of an effective system for protection of plant varieties, the rights of farmers and plant breeders and to encourage the development of new varieties of plants.

WHEREAS it is considered necessary to recognise and protect the rights of the farmers in respect of their contribution made at any time in conserving, improving and making available plant genetic resources for the development of new plant varieties;

AND WHEREAS for accelerated agricultural development in the country, it is necessary to protect plant breeders' rights to stimulate investment for research and development, both in the public and private sector, for the development of new plant varieties;

AND WHEREAS such protection will facilitate the growth of the seed industry in the country which will ensure the availability of high quality seeds and planting material to the farmers;

AND WHEREAS, to give effect to the aforesaid objectives, it is necessary to undertake measures for the protection of the rights of farmers and plant breeders;

AND WHEREAS India, having ratified the Agreement on Trade Related Aspects of Intellectual Property Rights should, *inter alia*, make provision for giving effect to sub-paragraph (b) of paragraph 3 of article 27 in Part II of the said Agreement relating to protection of plant varieties.

BE it enacted by Parliament in the Fifty-second Year of the Republic of India as follows :—

CHAPTER I

PRELIMINARY

Short title,
extent and
commence-
ment.

1. (1) This Act may be called the Protection of Plant Varieties and Farmers' Rights Act, 2001.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint; and different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

Definitions.

2. In this Act, unless the context otherwise requires,—

(a) "Authority" means the Protection of Plant Varieties and Farmers' Rights Authority established under sub-section (1) of section 3;

(b) "benefit sharing", in relation to a variety, means such proportion of the benefit accruing to a breeder of such variety or such proportion of the benefit accruing to the breeder from an agent or a licensee of such variety, as the case may be, for which a claimant shall be entitled as determined by the Authority under section 26;

(c) "breeder" means a person or group of persons or a farmer or group of farmers or any institution which has bred, evolved or developed any variety;

(d) "Chairman" means the Chairman of the Tribunal;

(e) "Chairperson" means the Chairperson of the Authority appointed under clause (a) of sub-section (5) of section 3,

(f) "convention country" means a country which has acceded to an international convention for the protection of plant varieties to which India has also acceded, or a country which has a law on protection of plant varieties on the basis of which India has entered into an agreement for granting plant breeders' right to the citizens of both the countries;

(g) "denomination", in relation to a variety or its propagating material or essentially derived variety or its propagating material, means the denomination of such variety or its propagating material or essentially derived variety or its propagating material, as the case may be, expressed by means of letters or a combination of letters and figures written in any language;

(h) "essential characteristics" means such heritable traits of a plant variety which are determined by the expression of one or more genes of other heritable determinants that contribute to the principal features, performance or value of the plant variety;

(i) "essentially derived variety", in respect of a variety (the initial variety), shall be said to be essentially derived from such initial variety when it—

(i) is predominantly derived from such initial variety, or from a variety that itself is predominantly derived from such initial variety, while retaining the expression of the essential characteristics that result from the genotype or combination of genotypes of such initial variety;

(ii) is clearly distinguishable from such initial variety; and

(iii) conforms (except for the differences which result from the act of derivation) to such initial variety in the expression of the essential characteristics that result from the genotype or combination of genotype of such initial variety;

(j) "extant variety" means a variety available in India which is—

(i) notified under section 5 of the Seeds Act, 1966; or

- (ii) farmers' variety; or
- (iii) a variety about which there is common knowledge; or
- (iv) any other variety which is in public domain;
- (k) "farmer" means any person who—
 - (i) cultivates crops by cultivating the land himself; or
 - (ii) cultivates crops by directly supervising the cultivation of land through any other person; or
 - (iii) conserves and preserves, severally or jointly, with any other person any wild species or traditional varieties or adds value to such wild species or traditional varieties through selection and identification of their useful properties;
- (l) "farmers' variety" means a variety which—
 - (i) has been traditionally cultivated and evolved by the farmers in their fields; or
 - (ii) is a wild relative or land race of a variety about which the farmers possess the common knowledge;
- (m) "Gene Fund" means the National Gene Fund constituted under sub-section (1) of section 45;
- (n) "Judicial Member" means a Member of the Tribunal appointed as such under sub-section (1) of section 55 and includes the Chairman;
- (o) "Member" means a Judicial Member or a Technical Member of the Tribunal and includes the Chairman;
- (p) "member" means a member of the Authority appointed under clause (b) of sub-section (5) of section 3 and includes the member-secretary;
- (q) "prescribed" means prescribed by rules made under this Act;
- (r) "propagating material" means any plant or its component or part thereof including an intended seed or seed which is capable of, or suitable for, regeneration into a plant;
- (s) "Register" means the National Register of Plant Varieties referred to in section 13;
- (t) "Registrar" means a Registrar of Plant Varieties appointed under sub-section (4) of section 12 and includes the Registrar-General;
- (u) "Registrar-General" means the Registrar-General of Plant Varieties appointed under sub-section (3) of section 12;
- (v) "Registry" means the Plant Varieties Registry referred to in sub-section (1) of section 12;
- (w) "regulations" means the regulations made by the Authority under this Act;
- (x) "seed" means a type of living embryo or propagule capable of regeneration and giving rise to a plant which is true to such type;
- (y) "Tribunal" means the Plant Varieties Protection Appellate Tribunal established under section 54;
- (z) "Technical Member" means a Member of the Tribunal who is not a Judicial Member;
- (za) "variety" means a plant grouping except micro organism within a single botanical taxon of the lowest known rank, which can be—
 - (i) defined by the expression of the characteristics resulting from a given genotype of that plant grouping;

(ii) distinguished from any other plant grouping by expression of at least one of the said characteristics; and

(iii) considered as a unit with regard to its suitability for being propagated, which remains unchanged after such propagation,

and includes propagating material of such variety, extant variety, transgenic variety, farmers' variety and essentially derived variety.

CHAPTER II

PROTECTION OF PLANT VARIETIES AND FARMERS' RIGHTS AUTHORITY AND REGISTRY

Protection of Plant Varieties and Farmers' Rights Authority

Establishment
of Authority.

3. (1) The Central Government shall, by notification in the Official Gazette, establish an Authority to be known as the Protection of Plant Varieties and Farmers' Rights Authority for the purposes of this Act.

(2) The Authority shall be a body corporate by the name aforesaid, having perpetual succession and a common seal with power to acquire, hold and dispose of properties, both movable and immovable, and to contract, and shall by the said name sue and be sued.

(3) The head office of the Authority shall be at such place as the Central Government may, by notification in the Official Gazette, specify and the Authority may, with the previous approval of the Central Government, establish branch offices at other places in India.

(4) The Authority shall consist of a Chairperson and fifteen members.

(5) (a) The Chairperson, to be appointed by the Central Government, shall be a person of outstanding calibre and eminence, with long practical experience to the satisfaction of that Government especially in the field of plant varietal research or agricultural development.

(b) The members of the Authority, to be appointed by the Central Government, shall be as follows, namely:—

(i) the Agriculture Commissioner, Government of India, Department of Agriculture and Cooperation, New Delhi, *ex officio*;

(ii) the Deputy Director General incharge of Crop Sciences, Indian Council of Agricultural Research, New Delhi, *ex officio*;

(iii) the Joint Secretary incharge of Seeds, Government of India, Department of Agriculture and Cooperation, New Delhi, *ex officio*;

(iv) the Horticulture Commissioner, Government of India, Department of Agriculture and Cooperation, New Delhi, *ex officio*;

(v) the Director, National Bureau of Plant Genetic Resources, New Delhi, *ex officio*;

(vi) one member not below the rank of Joint Secretary to the Government of India to represent the Department of Bio-technology, Government of India, *ex officio*;

(vii) one member not below the rank of Joint Secretary to the Government of India to represent the Ministry of Environment and Forests, Government of India, *ex officio*;

(viii) one member not below the rank of Joint Secretary to the Government of India to represent the Ministry of Law, Justice and Company Affairs, Government of India, *ex officio*;

(ix) one representative from a National or State level farmers' organisation to be nominated by the Central Government;

(x) one representative from a tribal organisation to be nominated by the Central Government;

(xi) one representative from the seed industry to be nominated by the Central Government,

(xii) one representative from an agricultural University to be nominated by the Central Government;

(xiii) one representative from a National or State level women's organisation associated with agricultural activities to be nominated by the Central Government; and

(xiv) two representatives of State Governments on rotation basis to be nominated by the Central Government.

(c) The Registrar-General shall be the *ex officio* member-secretary of the Authority.

(6) The term of office of the Chairperson and the manner of filling the post shall be such as may be prescribed.

(7) The Chairperson shall appoint a Standing Committee consisting of five members, one of whom shall be a member who is a representative from a farmers' organisation, to advise the Authority on all issues including farmers' rights.

(8) The Chairperson shall be entitled to such salary and allowances and shall be subject to such conditions of service in respect of leave, pension, provident fund and other matters as may be prescribed. The allowances for non-official members for attending the meetings of the Authority shall be such as may be prescribed.

(9) The Chairperson may resign his office by giving notice thereof in writing to the Central Government and on such resignation being accepted, he shall be deemed to have vacated his office.

(10) On the resignation of the Chairperson or on the vacation of the office of the Chairperson for any reason, the Central Government may appoint one of the members to officiate as Chairperson till a regular Chairperson is appointed in accordance with clause (a) of sub-section (5).

4. (1) The Authority shall meet at such time and place and shall observe such rules of procedure in regard to the transaction of business at its meetings [including the quorum at its meetings and the transaction of business of its Standing Committee appointed under sub-section (7) of section 3] as may be prescribed.

Meetings of
Authority.

(2) The Chairperson of the Authority shall preside at the meetings of the Authority.

(3) If, for any reason the Chairperson is unable to attend any meeting of the Authority, any member of the Authority chosen by the members present shall preside at the meeting.

(4) All questions which come before any meeting of the Authority shall be decided by a majority of the votes of the members of the Authority present and voting and in the event of equality of votes, the Chairperson of the Authority or in his absence, the person presiding shall have and exercise a second or casting vote.

(5) Every member who is in any way, whether directly, indirectly or personally, concerned or interested in a matter to be decided at the meeting shall disclose the nature of his concern or interest and after such disclosure, the member, concerned or interested, shall not attend that meeting.

(6) No act or proceeding of the Authority shall be invalid merely by reason of—

(a) any vacancy in, or any defect in the constitution of, the Authority; or

(b) any defect in the appointment of a person acting as the Chairperson or a member of the Authority; or

(c) any irregularity in the procedure of the Authority not affecting the merits of the case.

5. (1) The Authority may appoint such committees as may be necessary for the efficient discharge of its duties and performance of its functions under this Act.

Committee
Authority

(2) The persons appointed as members of the committee under sub-section (1) shall be entitled to receive such allowances or fees for attending the meetings of the committee as may be fixed by the Central Government.

Officers and other employees of Authority.

6. Subject to such control and restriction as may be prescribed, the Authority may appoint such officers and other employees as may be necessary for the efficient performance of its functions and the method of appointment, the salary and allowances and other conditions of service of such other officers and employees of the Authority shall be such as may be prescribed.

Chairperson to be Chief Executive.

7. The Chairperson shall be the Chief Executive of the Authority and shall exercise such powers and perform such duties as may be prescribed.

General functions of Authority.

8. (1) It shall be the duty of the Authority to promote, by such measures as it thinks fit, the encouragement for the development of new varieties of plants and to protect the rights of the farmers and breeders.

(2) In particular, and without prejudice to the generality of the foregoing provisions, the measures referred to in sub-section (1) may provide for—

(a) the registration of extant varieties subject to such terms and conditions and in the manner as may be prescribed;

(b) developing characterisation and documentation of varieties registered under this Act;

(c) documentation, indexing and cataloguing of farmers' varieties;

(d) compulsory cataloguing facilities for all varieties of plants;

(e) ensuring that seeds of the varieties registered under this Act are available to the farmers and providing for compulsory licensing of such varieties if the breeder of such varieties or any other person entitled to produce such variety under this Act does not arrange for production and sale of the seed in the manner as may be prescribed;

(f) collecting statistics with regard to plant varieties, including the contribution of any person at any time in the evolution or development of any plant variety, in India or in any other country, for compilation and publication;

(g) ensuring the maintenance of the Register.

Authentication of orders, etc., of Authority.

9. All orders and decisions of the Authority shall be authenticated by the signature of the Chairperson or any other member authorised by the Authority in this behalf.

Delegation.

10. The Authority may, by general or special order in writing, delegate to the Chairperson, any member or officer of the Authority subject to such conditions or limitations, if any, as may be specified in the order, such of its powers and functions (except the power to make regulations under section 95) under this Act as it may deem necessary.

Power of Authority.

11. In all proceedings under this Act before the Authority or the Registrar,—

(a) the Authority or the Registrar, as the case may be, shall have all the powers of a civil court for the purposes of receiving evidence, administering oaths, enforcing the attendance of witnesses, compelling the discovery and production of documents and issuing commissions for the examination of witnesses;

(b) the Authority or the Registrar may, subject to any rule made in this behalf under this Act, make such orders as to costs as it considers reasonable and any such order shall be executable as a decree of a civil court.

Registry

Registry and offices thereof.

12. (1) The Central Government shall establish, for the purposes of this Act, a Registry which shall be known as the Plant Varieties Registry.

(2) The head office of the Plant Varieties Registry shall be located in the head office of the Authority, and for the purpose of facilitating the registration of varieties, there may be established, at such places, as the Authority may think fit, branch offices of the Registry.

(3) The Authority shall appoint a Registrar-General of Plant Varieties who shall be entitled to such salary and allowances and shall be subject to such conditions of service in respect of leave, pension, provident fund and such other matters as may be prescribed.

(4) The Authority may appoint such number of Registrars as it thinks necessary for registration of plant varieties under the superintendence and direction of the Registrar-General under this Act and may make regulations with respect to their duties and jurisdiction.

(5) The term of office and the conditions of service of the Registrars shall be such as may be provided by regulations.

(6) The Authority may, by notification in the Official Gazette, define the territorial limits within which a branch office of the Registry may exercise its functions.

(7) There shall be a seal of the Plant Varieties Registry.

13. (1) For the purposes of this Act, a Register called the National Register of Plant Varieties shall be kept at the head office of the Registry, wherein shall be entered the names of all the registered plant varieties with the names and addresses of their respective breeders, the right of such breeders in respect of the registered varieties, the particulars of the denomination of each registered variety, its seed or other propagating material along with specification of salient features thereof and such other matters as may be prescribed.

National
Register of
Plant Varieties.

(2) Subject to the superintendence and direction of the Central Government, the Register shall be kept under the control and management of the Authority.

(3) There shall be kept at each branch office of the Registry a copy of the Register and such other documents as the Central Government may, by notification in the Official Gazette, direct.

CHAPTER III

REGISTRATION OF PLANT VARIETIES AND ESSENTIALLY DERIVED VARIETY

Application for registration

14. Any person specified in section 16 may make an application to the Registrar for registration of any variety—

Application for
registration.

(a) of such genera and species as specified under sub-section (2) of section 29; or

(b) which is an extant variety; or

(c) which is a farmers' variety.

15. (1) A new variety shall be registered under this Act if it conforms to the criteria of novelty, distinctiveness, uniformity and stability.

Registrable
varieties.

(2) Notwithstanding anything contained in sub-section (1), an extant variety shall be registered under this Act within a specified period if it conforms to such criteria of distinctiveness, uniformity and stability as shall be specified under the regulations.

(3) For the purposes of sub-sections (1) and (2), as the case may be, a new variety shall be deemed to be—

(a) novel, if, at the date of filing of the application for registration for protection, the propagating or harvested material of such variety has not been sold or otherwise disposed of by or with the consent of its breeder or his successor for the purposes of exploitation of such variety—

(i) in India, earlier than one year; or

(ii) outside India, in the case of trees or vines earlier than six years, or in any other case, earlier than four years,

before the date of filing such application:

Provided that a trial of a new variety which has not been sold or otherwise disposed of shall not affect the right to protection:

Provided further that the fact that on the date of filing the application for registration, the propagating or harvested material of such variety has become a matter of common knowledge other than through the aforesaid manner shall not affect the criteria of novelty for such variety;

(b) distinct, if it is clearly distinguishable by at least one essential characteristic from any other variety whose existence is a matter of common knowledge in any country at the time of filing of the application.

Explanation.—For the removal of doubts, it is hereby declared that the filing of an application for the granting of a breeder's right to a new variety or for entering such variety in the official register of varieties in any convention country shall be deemed to render that variety a matter of common knowledge from the date of the application in case the application leads to the granting of the breeder's right or to the entry of such variety in such official register, as the case may be;

(c) uniform, if subject to the variation that may be expected from the particular features of its propagation it is sufficiently uniform in its essential characteristics;

(d) stable, if its essential characteristics remain unchanged after repeated propagation or, in the case of a particular cycle of propagation, at the end of each such cycle.

(4) A new variety shall not be registered under this Act if the denomination given to such variety—

(i) is not capable of identifying such variety; or

(ii) consists solely of figures; or

(iii) is liable to mislead or to cause confusion concerning the characteristics, value identity of such variety or the identity of breeder of such variety; or

(iv) is not different from every denomination which designates a variety of the same botanical species or of a closely related species registered under this Act; or

(v) is likely to deceive the public or cause confusion in the public regarding the identity of such variety; or

(vi) is likely to hurt the religious sentiments respectively of any class or section of the citizens of India; or

(vii) is prohibited for use as a name or emblem for any of the purposes mentioned in section 3 of the Emblems and Names (Prevention of Improper Use) Act, 1950; or

12 of 1950.

(viii) is comprised of solely or partly of geographical name:

Provided that the Registrar may register a variety, the denomination of which comprises solely or partly of a geographical name, if he considers that the use of such denomination in respect of such variety is an honest use under the circumstances of the case.

16. (1) An application for registration under section 14 shall be made by—

(a) any person claiming to be the breeder of the variety; or

(b) any successor of the breeder of the variety; or

(c) any person being the assignee of the breeder of the variety in respect of the right to make such application; or

(d) any farmer or group of farmers or community of farmers claiming to be the breeder of the variety; or

Persons who
may make
application.

(e) any person authorised in the prescribed manner by a person specified under clauses (a) to (d) to make application on his behalf; or

(f) any university or publicly funded agricultural institution claiming to be the breeder of the variety.

(2) An application under sub-section (1) may be made by any of the persons referred to therein individually or jointly with any other person.

17. (1) Every applicant shall assign a single and distinct denomination to a variety with respect to which he is seeking registration under this Act in accordance with the regulations.

Compulsory
variety
denomination.

(2) The Authority shall, having regard to the provisions of any international convention or treaty to which India has become a party, make regulations governing the assignment of denomination to a variety.

(3) Where the denomination assigned to the variety does not satisfy the requirements specified in the regulations, the Registrar may require the applicant to propose another denomination within such time as may be specified by such regulations.

47 of 1999.

(4) Notwithstanding anything contained in the Trade Marks Act, 1999, a denomination assigned to a variety shall not be registered as a trade mark under that Act.

18. (1) Every application for registration under section 14 shall—

Form of
application.

(a) be with respect to a variety;

(b) state the denomination assigned to such variety by the applicant;

(c) be accompanied by an affidavit sworn by the applicant that such variety does not contain any gene or gene sequence involving terminator technology;

(d) be in such form as may be specified by regulations;

(e) contain a complete passport data of the parental lines from which the variety has been derived along with the geographical location in India from where the genetic material has been taken and all such information relating to the contribution, if any, of any farmer, village community, institution or organisation in breeding, evolving or developing the variety;

(f) be accompanied by a statement containing a brief description of the variety bringing out its characteristics of novelty, distinctiveness, uniformity and stability as required for registration;

(g) be accompanied by such fees as may be prescribed;

(h) contain a declaration that the genetic material or parental material acquired for breeding, evolving or developing the variety has been lawfully acquired; and

(i) be accompanied by such other particulars as may be prescribed:

Provided that in case where the application is for the registration of farmers' variety, nothing contained in clauses (b) to (i) shall apply in respect of the application and the application shall be in such form as may be prescribed.

(2) Every application referred to in sub-section (1) shall be filed in the office of the Registrar.

(3) Where such application is made by virtue of a succession or an assignment of the right to apply for registration, there shall be furnished at the time of making the application,

or within such period after making the application as may be prescribed, a proof of the right to make the application.

Test to be conducted.

19. (1) Every applicant shall, along with the application for registration made under this Act, make available to the Registrar such quantity of seed of a variety for registration of which such application is made, for the purpose of conducting tests to evaluate whether seed of such variety along with parental material conform to the standards as may be specified by regulations:

Provided that the Registrar or any person or test centre to whom such seed has been sent for conducting test shall keep such seed during his or its possession in such manner and in such condition that its viability and quality shall remain unaltered.

(2) The applicant shall deposit such fees as may be prescribed for conducting tests referred to in sub-section (1).

(3) The tests referred to in sub-section (1) shall be conducted in such manner and by such method as may be prescribed.

Acceptance of application or amendment thereof.

20. (1) On receipt of an application under section 14, the Registrar may, after making such inquiry as he thinks fit with respect to the particulars contained in such application, accept the application absolutely or subject to such conditions or limitations as he deems fit.

(2) Where the Registrar is satisfied that the application does not comply with the requirements of this Act or any rules or regulations made thereunder, he may, either—

(a) require the applicant to amend the application to his satisfaction; or

(b) reject the application:

Provided that no application shall be rejected unless the applicant has been given a reasonable opportunity of presenting his case.

Advertisement of application.

21. (1) Where an application for registration of a variety has been accepted absolutely or subject to conditions or limitations under sub-section (1) of section 20, the Registrar shall, as soon as after its acceptance, cause such application together with the conditions or limitations, if any, subject to which it has been accepted and the specifications of the variety for registration of which such application is made including its photographs or drawings, to be advertised in the prescribed manner calling objections from the persons interested in the matter.

(2) Any person may, within three months from the date of the advertisement of an application for registration on payment of the prescribed fees, give notice in writing in the prescribed manner, to the Registrar of his opposition to the registration.

(3) Opposition to the registration under sub-section (2) may be made on any of the following grounds, namely:—

(a) that the person opposing the application is entitled to the breeder's right as against the applicant; or

(b) that the variety is not registrable under this Act; or

(c) that the grant of certificate of registration may not be in public interest; or

(d) that the variety may have adverse effect on the environment.

(4) The Registrar shall serve a copy of the notice of opposition on the applicant for registration and, within two months from the receipt by the applicant of such copy of the

notice of opposition, the applicant shall send to the Registrar in the prescribed manner a counter-statement of the grounds on which he relies for his application, and if he does not do so, he shall be deemed to have abandoned his application.

(5) If the applicant sends such counter-statement, the Registrar shall serve a copy thereof on the person giving notice of opposition.

(6) Any evidence upon which the opponent and the applicant may rely shall be submitted, in the manner prescribed and within the time prescribed, to the Registrar and the Registrar shall give an opportunity to them to be heard, if so desired.

(7) The Registrar shall, after hearing the parties, if so required, and considering the evidence, decide whether and subject to what conditions or limitations, if any, the registration is to be permitted and may take into account a ground of objection whether relied upon by the opponent or not.

(8) Where a person giving notice of opposition or an applicant sending a counter-statement after receipt of a copy of such notice neither resides nor carries on business in India, the Registrar may require him to give security for the cost of proceedings before him and in default of such security being duly given may treat the opposition or application, as the case may be, as abandoned.

(9) The Registrar may, on request, permit correction of any error in, or any amendment of, a notice of opposition or a counter-statement on such terms as he may think fit.

22. The Registrar shall consider all the grounds on which the application has been opposed and after giving reasons for his decision, by order, uphold or reject the opposition.

Registrar to consider grounds of opposition.

Registration of essentially derived variety

23. (1) An application for the registration of an essentially derived variety of the genera or species specified under sub-section (2) of section 29 by the Central Government shall be made to the Registrar by or on behalf of any person referred to in section 14 and in the manner specified in section 18 as if for the word "variety", the words "essentially derived variety" have been substituted therein and shall be accompanied by such documents and fees as may be prescribed.

Registration of essentially derived variety.

(2) When the Registrar is satisfied that the requirements of sub-section (1) have been complied with to his satisfaction, he shall forward the application with his report and all the relevant documents to the Authority.

(3) On receipt of an application under sub-section (2), the Authority shall get examined such essentially derived variety to determine as to whether the essentially derived variety is a variety derived from the initial variety by conducting such tests and following such procedure as may be prescribed.

(4) When the Authority is satisfied on the report of the test referred to in sub-section (3) that the essentially derived variety has been derived from the initial variety, it may direct the Registrar to register such essentially derived variety and the Registrar shall comply with the direction of the Authority.

(5) Where the Authority is not satisfied on the report of the test referred to in sub-section (3) that the essentially derived variety has been derived from the initial variety it shall refuse the application.

(6) The rights of the breeder of a variety contained in section 28 shall apply to the breeder of essentially derived variety:

Provided that the authorisation by the breeder of the initial variety to the breeder of essentially derived variety under sub-section (2) of section 28 may be subject to such terms and conditions as both the parties may mutually agree upon.

(7) An essentially derived variety shall not be registered under this section unless it satisfies the requirements of section 15 as if for the word "variety", the words "essentially derived variety" have been substituted therein.

(8) When an essentially derived variety has been registered by the Registrar in compliance with the direction of the Authority under sub-section (4), the Registrar shall issue to the applicant a certificate of registration in the prescribed form and sealed with the seal of the Registry and send a copy thereof to the Authority and to such other authority, as may be prescribed, for information.

CHAPTER IV

DURATION AND EFFECT OF REGISTRATION AND BENEFIT SHARING

Issue of
certificate of
registration.

24. (1) When an application for registration of a variety (other than an essentially derived variety) has been accepted and either—

(a) the application has not been opposed and the time of notice of opposition has expired; or

(b) the application has been opposed and the opposition has been rejected,
the Registrar shall register the variety.

(2) On the registration of the variety (other than an essentially derived variety), the Registrar shall issue to the applicant a certificate of registration in the prescribed form and sealed with the seal of the Registry and send a copy thereof to the Authority for determination of benefit sharing and to such other authority, as may be prescribed, for information. The maximum time required by the Registrar for issuing the certificate of registration from the date of filing of the application for registration of a variety shall be such as may be prescribed.

(3) Where registration of a variety (other than an essentially derived variety), is not completed within twelve months from the date of the application by reason of default on the part of the applicant, the Registrar may, after giving notice to the applicant in the prescribed manner, treat the application as abandoned unless it is completed within the time specified in that behalf in the notice.

(4) The Registrar may amend the Register or a certificate of registration for the purpose of correcting a clerical error or an obvious mistake.

(5) The Registrar shall have power to issue such directions to protect the interests of a breeder against any abusive act committed by any third party during the period between filing of application for registration and decision taken by the Authority on such application.

(6) The certificate of registration issued under this section or sub-section (8) of section 23 shall be valid for nine years in the case of trees and vines and six years in the case of other crops and may be reviewed and renewed for the remaining period on payment of such fees as may be fixed by the rules made in this behalf subject to the condition that the total period of validity shall not exceed,—

(i) in the case of trees and vines, eighteen years from the date of registration of the variety;

(ii) in the case of extant variety, fifteen years from the date of the notification of that variety by the Central Government under section 5 of the Seeds Act, 1966; and

(iii) in other cases, fifteen years from the date of registration of the variety.

25. The Authority shall, within such intervals as it thinks appropriate, publish the list of varieties which have been registered during that interval.

Publication of
list of varieties.

26. (1) On receipt of copy of the certificate of registration under sub-section (8) of section 23 or sub-section (2) of section 24, the Authority shall publish such contents of the certificate and invite claims of benefit sharing to the variety registered under such certificate in the manner as may be prescribed.

Determination
of benefit
sharing by
Authority.

(2) On invitation of the claims under sub-section (1), any person or group of persons or firm or governmental or non-governmental organisation shall submit its claim of benefit sharing to such variety in the prescribed form within such period, and accompanied with such fees, as may be prescribed:

Provided that such claim shall only be submitted by any—

(i) person or group of persons, if such person or every person constituting such group is a citizen of India; or

(ii) firm or governmental or non-governmental organisation, if such firm or organisation is formed or established in India.

(3) On receiving a claim under sub-section (2), the Authority shall send a copy of such claim to the breeder of the variety registered under such certificate and the breeder may, on receipt of such copy, submit his opposition to such claim within such period and in such manner as may be prescribed.

(4) The Authority shall, after giving an opportunity of being heard to the parties, dispose of the claim received under sub-section (2).

(5) While disposing of the claim under sub-section (4), the Authority shall explicitly indicate in its order the amount of the benefit sharing, if any, for which the claimant shall be entitled and shall take into consideration the following matters, namely:—

(a) the extent and nature of the use of genetic material of the claimant in the development of the variety relating to which the benefit sharing has been claimed;

(b) the commercial utility and demand in the market of the variety relating to which the benefit sharing has been claimed.

(6) The amount of benefit sharing to a variety determined under this section shall be deposited by the breeder of such variety in the manner referred to in clause (a) of sub-section (1) of section 45 in the National Gene Fund.

(7) The amount of benefit sharing determined under this section shall, on a reference made by the Authority in the prescribed manner, be recoverable as an arrear of land revenue by the District Magistrate within whose local limits of jurisdiction the breeder liable for such benefit sharing resides.

27. (1) The breeder shall be required to deposit such quantity of seeds or propagating material including parental line seeds of registered variety in the National Gene Bank as may be specified in the regulations for reproduction purpose at the breeder's expense within such time as may be specified in that regulation.

Breeder to
deposit seeds
or propagating
material.

(2) The seeds or propagating material or parental line seeds to be deposited under sub-section (1) shall be deposited to the National Gene Bank specified by the Authority.

28. (1) Subject to the other provisions of this Act, a certificate of registration for a variety issued under this Act shall confer an exclusive right on the breeder or his successor, his agent or licensee, to produce, sell, market, distribute, import or export the variety:

Registration to
confer right.

Provided that in the case of an extant variety, unless a breeder or his successor establishes his right, the Central Government, and in cases where such extant variety is notified for a State or for any area thereof under section 5 of the Seeds Act, 1966, the State Government, shall be deemed to be the owner of such right. 54 of 1966.

(2) A breeder may authorise any person to produce, sell, market or otherwise deal with the variety registered under this Act subject to such limitations and conditions as may be specified by regulations.

(3) Every authorisation under this section shall be in such form as may be specified by regulations.

(4) Where an agent or a licensee referred to in sub-section (1) becomes entitled to produce, sell, market, distribute, import or export a variety, he shall apply in the prescribed manner and with the prescribed fees to the Registrar to register his title and the Registrar shall, on receipt of application and on proof of title to his satisfaction, register him as an agent or a licensee, as the case may be, in respect of the variety for which he is entitled for such right, and shall cause particulars of such entitlement and conditions or restrictions, if any, subject to which such entitlement is made, to be entered in the Register.

Provided that when the validity of such entitlement is in dispute between the parties, the Registrar may refuse to register the entitlement and refer the matter in the prescribed manner to the Authority and withhold the registration of such entitlement until the right of the parties in dispute so referred to has been determined by the Authority.

(5) The Registrar shall issue a certificate of registration under sub-section (4) to the applicant after such registration and shall enter in the certificate the brief conditions of entitlement, if any, in the prescribed manner, and such certificate shall be the conclusive proof of such entitlement and the conditions or restrictions thereof, if any.

(6) Subject to any agreement subsisting between the parties, an agent or licensee of a right to a variety registered under sub-section (4) shall be entitled to call upon the breeder or his successor thereof to take proceedings to prevent infringement thereof, and if the breeder or his successor refuses or neglects to do so within three months after being so called upon, such registered agent or licensee may institute proceedings for infringement in his own name as if he were the breeder, making the breeder or his successor a defendant.

(7) Notwithstanding anything contained in any other law, a breeder or his successor so added as defendant shall not be liable for any costs unless he enters an appearance and takes part in the proceedings.

(8) Nothing in this section shall confer on a registered agent or registered licensee of a variety any right to transfer such right further thereof.

(9) Without prejudice to the registration under sub-section (4), the terms of registration—

(a) may be varied by the Registrar as regards the variety in respect of which, or any condition or restriction subject to which, it has effect on receipt of an application in the prescribed manner of the registered breeder of such variety or his successor;

(b) may be cancelled by the Registrar on the application in the prescribed manner of the registered breeder of such variety or his successor or of the registered agent or registered licensee of such variety;

(c) may be cancelled by the Registrar on the application in the prescribed manner of any person other than the breeder, his successor, the registered agent or the registered licensee on any of the following grounds, namely:—

(i) that the breeder of a variety or his successor or the registered agent or registered licensee of such variety, misrepresented, or failed to disclose, some fact material to the application for registration under sub-section (4) which if accurately represented or disclosed would have justified the refusal of the application for registration of the registered agent or registered licensee;

(ii) that the registration ought not to have been effected having regard to the right vested in the applicant by virtue of a contract in the performance of which he is interested;

(d) may be cancelled by the Registrar on the application in the prescribed manner of the breeder of a registered variety or his successor on the ground that any stipulation in the agreement between the registered agent or the registered licensee, as the case may be, and such breeder or his successor regarding the variety for which such agent or licensee is registered is not being enforced or is not being complied with;

(e) may be cancelled by the Registrar on the application of any person in the prescribed manner on the ground that the variety relating to the registration is no longer existing.

(10) The Registrar shall issue notice in the prescribed manner of every application under this section to the registered breeder of a variety or his successor and to each registered agent or registered licensee (not being the applicant) of such variety.

(11) The Registrar shall, before making any order under sub-section (9), forward the application made in that behalf along with any objection received by any party after notice under sub-section (10) for the consideration of the Authority, and the Authority may, after making such inquiry as it thinks fit, issue such directions to the Registrar as it thinks fit and the Registrar shall dispose of the application in accordance with such directions.

29. (1) Notwithstanding anything contained in this Act, no registration of a variety shall be made under this Act in cases where prevention of commercial exploitation of such variety is necessary to protect public order or public morality or human, animal and plant life and health or to avoid serious prejudice to the environment.

Exclusion of
certain
varieties.

(2) The Central Government shall, by notification in the Official Gazette, specify the genera or species for the purpose of registration of varieties other than extant varieties and farmers' varieties under this Act.

(3) Notwithstanding anything contained in sub-section (2) and sub-sections (1) and (2) of section 15, no variety of any genera or species which involves any technology which is injurious to the life or health of human beings, animals or plants shall be registered under this Act.

Explanation.—For the purposes of this sub-section, the expression “any technology” includes genetic use restriction technology and terminator technology.

(4) The Central Government shall not delete any genera or species from the list of genera or species specified in a notification issued under sub-section (2) except in the public interest.

(5) Any variety belonging to the genera or species excluded under sub-section (4) shall not be eligible for any protection under this Act.

30. Nothing contained in this Act shall prevent—

(a) the use of any variety registered under this Act by any person using such variety for conducting experiment or research; or

Researcher's
rights.

(b) the use of a variety by any person as an initial source of variety for the purpose of creating other varieties:

Provided that the authorisation of the breeder of a registered variety is required where the repeated use of such variety as a parental line is necessary for commercial production of such other newly developed variety.

Special provisions relating to application for registration from citizens of convention countries.

31. (1) With a view to the fulfilment of a treaty, convention or arrangement with any country outside India which affords to citizens of India similar privileges as granted to its own citizens, the Central Government may, by notification in the Official Gazette, declare such country to be a convention country for the purposes of this Act.

(2) Where a person has made an application for the granting of a breeder's right to a variety or for entering such variety in the official register of varieties in a convention country and that person, or any person entitled to make application on his behalf under section 14 or section 23, makes an application for the registration of such variety in India within twelve months after the date on which the application was made in the convention country, such variety shall, if registered under this Act, be registered as of the date on which the application was made in the convention country and that date shall be deemed for the purposes of this Act to be the date of registration.

(3) Where applications have been made for granting of a breeder's right to a variety, or for entering such variety in the official register of varieties in two or more convention countries, the period of twelve months referred to in sub-section (2) shall be reckoned from the date on which the earlier or earliest of those applications were made.

(4) Nothing in this Act shall entitle the breeder of a registered variety for infringement of rights other than protected under this Act which took place prior to the date of application of registration under this Act.

Provisions as to reciprocity.

32. Where any country declared by the Central Government in this behalf by notification in the Official Gazette under sub-section (1) of section 31 does not accord to citizens of India the same rights in respect of the registration and protection of a variety, as it accords to its own nationals, no national of such country shall be entitled, either solely or jointly with any other person, to apply for the registration of a variety or be entitled to get a variety registered under this Act.

CHAPTER V

SURRENDER AND REVOCATION OF CERTIFICATE AND RECTIFICATION AND CORRECTION OF REGISTER

Surrender of certificate of registration.

33. (1) A breeder of a variety registered under this Act may, at any time by giving notice in the prescribed manner to the Registrar, offer to surrender his certificate of registration.

(2) Where such an offer is made, the Registrar shall notify in the prescribed manner every registered agent or registered licensee relating to such certificate.

(3) Any of such agent or licensee may, within the prescribed period after such notification, give notice to the Registrar of his opposition to the surrender and where any such notice is given, the Registrar shall intimate the contents of such notice to the breeder of such variety.

(4) If the Registrar is satisfied after hearing the applicant and all the opponents, if desirous of being heard, that the certificate of registration may properly be surrendered, he may accept the offer and by order revoke the certificate of registration.

Revocation of protection on certain grounds.

34. Subject to the provisions contained in this Act, the protection granted to a breeder in respect of a variety may, on the application in the prescribed manner of any person interested, be revoked by the Authority on any of the following grounds, namely:—

(a) that the grant of the certificate of registration has been based on incorrect information furnished by the applicant;

(b) that the certificate of registration has been granted to a person who is not eligible for protection under this Act;

(c) that the breeder did not provide the Registrar with such information, documents or material as required for registration under this Act;

(d) that the breeder has failed to provide an alternative denomination of the variety which is the subject matter of the registration to the Registrar in case where the earlier denomination of such variety provided to the Registrar is not permissible for registration under this Act;

(e) that the breeder did not provide the necessary seeds or propagating material to the person to whom compulsory licence has been issued under section 47 regarding the variety in respect of which registration certificate has been issued to such breeder;

(f) that the breeder has not complied with the provisions of this Act or rules or regulations made thereunder;

(g) that the breeder has failed to comply with the directions of the Authority issued under this Act;

(h) that the grant of the certificate of registration is not in the public interest.

Provided that no such protection shall be revoked unless the breeder is given a reasonable opportunity to file objection and of being heard in the matter.

35. (1) The Authority may, with the prior approval of the Central Government, by notification in the Official Gazette, impose a fee to be paid annually, by every breeder of a variety, agent and licensee thereof registered under this Act determined on the basis of benefit or royalty gained by such breeder, agent or licensee, as the case may be, in respect of the variety, for the retention of their registration under this Act.

Payment of annual fees and forfeiture of registration in default thereof.

(2) If any breeder, agent or licensee fails to deposit the fee referred to in sub-section (1) imposed upon him under that sub-section in the prescribed manner up to two consecutive years, the Authority shall issue notice to such breeder, agent or licensee and on service of such notice if he fails to comply with the direction in the notice, the Authority shall declare all the protection admissible under the registration certificate issued to such breeder or agent or licensee forfeited.

(3) The arrears of fee imposed under sub-section (1) shall be deemed to be the arrears of land revenue and shall be recoverable accordingly.

36. (1) On an application made in the prescribed manner to the Registrar by any person aggrieved, the Registrar may make such order as he may think fit for cancelling or changing any certificate of registration issued under this Act on the ground of any contravention of the provisions of this Act or failure to observe a condition subject to which such registration certificate is issued.

Power to cancel or change registration and to rectify the Register.

(2) Any person aggrieved by the absence or omission from the Register of any entry, or by any entry made in the Register without sufficient cause, or by any entry wrongly remaining on the Register, may apply in the prescribed manner to the Registrar and the Registrar may make such order for making, expunging or varying the entry as he may think fit.

(3) The Registrar may, in any proceeding under this section, decide any question that may be necessary or expedient to decide in connection with the rectification of the Register.

(4) The Registrar on his own motion may, after giving notice in the prescribed manner to the parties concerned and after giving them an opportunity of being heard, make any order referred to in sub-section (1) or sub-section (2).

37. (1) The Registrar may, on an application in the prescribed manner by the breeder of a variety registered under this Act,—

Correction of Register.

(a) correct any error in the Register in the name, address or description of such breeder or any other entry relating to such variety;

(b) enter in the Register any change in the name, address or description of such breeder;

(c) cancel the entry in the Register of the variety in respect of which such application is made; and may make any consequential amendment or alteration in the certificate of registration and for that purpose require the certificate of registration to be produced to him.

(2) The Registrar may, on application made in the prescribed manner by a registered agent or a registered licensee of a variety and after notice to the registered breeder of such variety, correct any error or enter any change, in the name, address or description of such registered agent or registered licensee, as the case may be, in the Register or certificate of registration issued under this Act.

Alteration of
denomination
of a registered
variety.

38. (1) The breeder of a variety registered under this Act may apply in the prescribed manner to the Registrar to delete any part or to add to or alter the denomination of such variety in any manner not substantially affecting the identity thereof, and the Registrar may refuse leave or may grant it on such terms and subject to such limitations as he may think fit to avoid any conflict with the rights of other breeders of the varieties registered under this Act.

(2) The Registrar may cause an application under this section to be advertised in the prescribed manner in any case where it appears to him that it is expedient so to do, and where he does so, if within the prescribed time from the date of the advertisement any person gives notice to the Registrar in the prescribed manner of opposition to the application, the Registrar shall, after hearing the parties if so required, decide the matter.

(3) Where leave is granted under this section, the denomination of the variety as altered shall be advertised in the prescribed manner, unless the application has already been advertised under sub-section (2).

CHAPTER VI

FARMERS' RIGHTS

Farmers'
rights.

39. (1) Notwithstanding anything contained in this Act,—

(i) a farmer who has bred or developed a new variety shall be entitled for registration and other protection in like manner as a breeder of a variety under this Act;

(ii) the farmers' variety shall be entitled for registration if the application contains declaration as specified in clause (h) of sub-section (1) of section 18;

(iii) a farmer who is engaged in the conservation of genetic resources of land races and wild relatives of economic plants and their improvement through selection and preservation shall be entitled in the prescribed manner for recognition and reward from the Gene Fund:

Provided that material so selected and preserved has been used as donors of genes in varieties registrable under this Act;

(iv) a farmer shall be deemed to be entitled to save, use, sow, resow, exchange, share or sell his farm produce including seed of a variety protected under this Act in the same manner as he was entitled before the coming into force of this Act:

Provided that the farmer shall not be entitled to sell branded seed of a variety protected under this Act.

Explanation.—For the purposes of clause (iv), “branded seed” means any seed put in a package or any other container and labelled in a manner indicating that such seed is of a variety protected under this Act.

(2) Where any propagating material of a variety registered under this Act has been sold to a farmer or a group of farmers or any organisation of farmers, the breeder of such variety shall disclose to the farmer or the group of farmers or the organisation of farmers, as the case may be, the expected performance under given conditions, and if such propagating material fails to provide such performance under such given conditions, the farmer or the group of farmers or the organisation of farmers, as the case may be, may claim compensation in the prescribed manner before the Authority and the Authority, after giving notice to the breeder of the variety and after providing him an opportunity to file opposition in the prescribed manner and after hearing the parties, may direct the breeder of the variety to pay such compensation as it deems fit, to the farmer or the group of farmers or the organisation of farmers, as the case may be.

40. (1) A breeder or other person making application for registration of any variety under Chapter III shall disclose in the application the information regarding the use of genetic material conserved by any tribal or rural families in the breeding or development of such variety.

Certain information to be given in application for registration.

(2) If the breeder or such other person fails to disclose any information under sub-section (1), the Registrar may, after being satisfied that the breeder or such person has wilfully and knowingly concealed such information, reject the application for registration.

41. (1) Any person or group of persons (whether actively engaged in farming or not) or any governmental or non-governmental organisation may, on behalf of any village or local community in India, file in any centre notified, with the previous approval of the Central Government, by the Authority, in the Official Gazette, any claim attributable to the contribution of the people of that village or local community, as the case may be, in the evolution of any variety for the purpose of staking a claim on behalf of such village or local community.

Rights of communities.

(2) Where any claim is made under sub-section (1), the centre notified under that sub-section may verify the claim made by such person or group of persons or such governmental or non-governmental organisation in such manner as it deems fit, and if it is satisfied that such village or local community has contributed significantly to the evolution of the variety which has been registered under this Act, it shall report its findings to the Authority.

(3) When the Authority, on a report under sub-section (2) is satisfied, after such inquiry as it may deem fit, that the variety with which the report is related has been registered under the provisions of this Act, it may issue notice in the prescribed manner to the breeder of that variety and after providing opportunity to such breeder to file objection in the prescribed manner and of being heard, it may subject to any limit notified by the Central Government, by order, grant such sum of compensation to be paid to a person or group of persons or governmental or non-governmental organisation which has made claim under sub-section (1), as it may deem fit.

(4) Any compensation granted under sub-section (3) shall be deposited by the breeder of the variety in the Gene Fund.

(5) The compensation granted under sub-section (3) shall be deemed to be an arrear of land revenue and shall be recoverable by the Authority accordingly.

42. Notwithstanding anything contained in this Act,—

Protection of innocent infringement.

(i) a right established under this Act shall not be deemed to be infringed by a farmer who at the time of such infringement was not aware of the existence of such right; and

(ii) a relief which a court may grant in any suit for infringement referred to in section 65 shall not be granted by such court, nor any cognizance of any offence under this Act shall be taken, for such infringement by any court against a farmer who proves, before such court, that at the time of the infringement he was not aware of the existence of the right so infringed.

Authorisation
of farmers'
variety.

43. Notwithstanding anything contained in sub-section (6) of section 23 and section 28, where an essentially derived variety is derived from a farmers' variety, the authorisation under sub-section (2) of section 28 shall not be given by the breeder of such farmers' variety except with the consent of the farmers or group of farmers or community of farmers who have made contribution in the preservation or development of such variety.

Exemption
from fees.

44. A farmer or group of farmers or village community shall not be liable to pay any fees in any proceeding before the Authority or Registrar or the Tribunal or the High Court under this Act or the rules made thereunder.

Explanation.—For the purposes of this section, "fees in any proceeding" includes any fees payable for inspection of any document or for obtaining a copy of any decision or order or document under this Act or the rules made thereunder.

Gene Fund.

45. (1) The Central Government shall constitute a Fund to be called the National Gene Fund and there shall be credited thereto—

(a) the benefit sharing received in the prescribed manner from the breeder of a variety or an essentially derived variety registered under this Act, or propagating material of such variety or essentially derived variety, as the case may be;

(b) the annual fee payable to the Authority by way of royalty under sub-section (1) of section 35;

(c) the compensation deposited in the Gene Fund under sub-section (4) of section 41;

(d) the contribution from any national and international organisation and other sources.

(2) The Gene Fund shall, in the prescribed manner, be applied for meeting—

(a) any amount to be paid by way of benefit sharing under sub-section (5) of section 26;

(b) the compensation payable under sub-section (3) of section 41;

(c) the expenditure for supporting the conservation and sustainable use of genetic resources including *in-situ* and *ex-situ* collections and for strengthening the capability of the Panchayat in carrying out such conservation and sustainable use;

(d) the expenditure of the schemes relating to benefit sharing framed under section 46.

Framing of
schemes, etc.

46. (1) The Central Government shall, for the purposes of section 41 and clause (d) of sub-section (2) of section 45, frame, by notification in the Official Gazette, one or more schemes.

(2) In particular, and without prejudice to the generality of the provisions of sub-section (1), the scheme may provide for all or any of the following matters, namely:—

(a) the registration of the claims for the purposes of section 41 under the scheme and all matters connected with such registration;

(b) the processing of such claims for securing their enforcement and matters connected therewith;

(c) the maintenance of records and registers in respect of such claims;

(d) the utilisation, by way of disbursal (including apportionment) or otherwise, of any amounts received in satisfaction of such claims;

(e) the procedure for disbursal or apportionment by the Authority in the event of dispute regarding such claims;

(f) the utilisation of benefit sharing for the purposes relating to breeding, discovery or development of varieties;

(g) the maintenance and audit of accounts with respect to the amounts referred to in clause (d).

CHAPTER VII

COMPULSORY LICENCE

47. (1) At any time, after the expiry of three years from the date of issue of a certificate of registration of a variety, any person interested may make an application to the Authority alleging that the reasonable requirements of the public for seed or other propagating material of the variety have not been satisfied or that the seed or other propagating material of the variety is not available to the public at a reasonable price and pray for the grant of a compulsory licence to undertake production, distribution and sale of the seed or other propagating material of that variety.

Power of Authority to make order for compulsory licence in certain circumstances.

(2) Every application under sub-section (1) shall contain a statement of the nature of the applicant's interest together with such particulars as may be prescribed and the facts upon which the application is based.

(3) The Authority, after consultation with the Central Government, and if satisfied after giving an opportunity to the breeder of such variety to file opposition and after hearing the parties, on the issue that the reasonable requirements of the public with respect to the variety have not been satisfied or that the seed or other propagating material of the variety is not available to the public at a reasonable price, may order such breeder to grant a licence to the applicant upon such terms and conditions as it may deem fit and send a copy of such order to the Registrar to register the title of such applicant as licensee under sub-section (4) of section 28 on payment of such fees by the applicant as is referred to in that sub-section.

48. In determining the question as to whether the reasonable requirements of the public for seeds of a variety or its propagating material as referred to in sub-section (1) or sub-section (3) of section 47, the Authority shall take into account—

When requirement of public deemed to have not been satisfied.

(i) the nature of the variety, the time which has elapsed since the grant of the certificate of registration of the variety, price of the seed of the variety and the measures taken by the breeder or any registered licensee of the variety to meet the requirement of the public; and

(ii) the capacity, ability and technical competence of the applicant to produce and market the variety to meet the requirement of the public.

49. (1) If the breeder of a variety registered under this Act in respect of which any application has been pending before the Authority under section 47 makes a written request to the Authority on the ground that due to any reasonable factor, such breeder has been unable to produce seed or other propagating material of the variety on a commercial scale to an adequate extent till the date of making such request, the Authority may, on being satisfied that the said ground is reasonable, adjourn the hearing of such application for such period not exceeding twelve months in aggregate as it may consider sufficient for optimum production of the seed or propagating material of such variety, as the case may be, by such breeder.

Adjournment of application for grant of compulsory licence.

(2) No adjournment of the application under sub-section (1) shall be granted unless the Authority is satisfied that the breeder of the variety registered under this Act in respect of which such application is made, has taken immediate measures to meet the reasonable requirements of the public for the seed or other propagating material of such variety.

50. The Authority shall determine the duration of the compulsory licences granted under this Chapter and such duration may vary from case to case keeping in view the gestation periods and other relevant factors but in any case it shall not exceed the total remaining period of the protection of that variety and when a compulsory licence is granted the prescribed authority shall, in the prescribed manner make available to the licensee of such compulsory licence, the reproductive material of the variety relating to such compulsory licence stored in the National Gene Bank or any other centre.

Duration of compulsory licence.

Authority to
settle terms and
conditions of
licence.

51. (1) The Authority shall, while determining the terms and conditions of a compulsory licence under the provisions of this Chapter, endeavour to secure—

(i) reasonable compensation to the breeder of the variety relating to the compulsory licence having regard to the nature of the variety, the expenditure incurred by such breeder in breeding the variety or for developing it, and other relevant factors;

(ii) that the compulsory licensee of such variety possesses the adequate means to provide to the farmers, the seeds or other propagating material of such variety, timely and at reasonable market price.

(2) No compulsory licence granted by the Authority shall authorise the licensee to import the variety relating to such licence or any seed or other propagating material of such variety from abroad where such import would constitute an infringement of the rights of the breeder of such variety.

Revocation of
compulsory
licence.

52. (1) The Authority, on its own motion or on application from an aggrieved person made to it in the prescribed form, if it is satisfied that a compulsory licensee registered under this Chapter has violated any terms or conditions of his licence or it is not appropriate to continue further such licence in public interest, may, after giving such licensee an opportunity to file opposition and of being heard, make order to revoke such licence.

(2) When a licence is revoked under sub-section (1) by an order of the Authority, the Authority shall send a copy of such order to the Registrar to rectify the entry or correct the Register relating to such revocation and the Registrar shall rectify the entry or correct the Register accordingly.

Modification of
compulsory
licence.

53. The Authority may, on its own motion or on application from the licensee of a compulsory licence, after providing the opportunity of being heard to the breeder of the variety registered under this Act relating to such compulsory licence, if it considers, in public interest, so to do, modify, by order, such terms and conditions as it thinks fit and send a copy of such order to the Registrar to correct the entries and Register according to such modification and the Registrar shall ensure such corrections to be made accordingly.

CHAPTER VIII

PLANT VARIETIES PROTECTION APPELLATE TRIBUNAL

Tribunal.

54. The Central Government may, by notification in the Official Gazette, establish a Tribunal to be known as the Plant Varieties Protection Appellate Tribunal to exercise the jurisdiction, powers and authority conferred on it by or under this Act.

Composition of
Tribunal.

55. (1) The Tribunal shall consist of a Chairman and such number of Judicial Members and Technical Members as the Central Government may deem fit to appoint.

(2) A Judicial Member shall be a person who has for at least ten years held a judicial office in the territory of India or who has been a member of the Indian Legal Service and has held a post in Grade-II of that Service or any equivalent or higher post for at least three years or who has been an advocate for at least twelve years.

Explanation.—For the purposes of this sub-section,—

(i) in computing the period during which a person has held judicial office in the territory of India, there shall be included any period, after he has held any judicial office, during which the person has been an advocate or has held the office of a member of a tribunal or any post, under the Union or a State, requiring special knowledge of law;

(ii) in computing the period during which a person has been an advocate, there shall be included any period during which the person has held judicial office or the

office of a member of a tribunal or any post, under the Union or a State, requiring special knowledge of law after he became an advocate.

(3) A Technical Member shall be a person who is an eminent agricultural scientist in the field of plant breeding and genetics and possesses an experience of at least twenty years to deal with plant variety or seed development activity, or who has held the post in the Central Government or a State Government dealing with plant variety or seed development equivalent to the Joint Secretary to the Government of India for at least three years and possesses special knowledge in the field of plant breeding and genetics.

(4) The Central Government shall appoint a Judicial Member of the Tribunal to be the Chairman thereof.

(5) The Central Government may appoint one of the Members of the Tribunal to be the senior Member thereof.

(6) The senior Member or a Member shall exercise such of the powers and perform such of the functions of the Chairman as may be delegated to him by the Chairman by a general or special order in writing.

56. (1) An appeal shall be preferred to the Tribunal within the prescribed period from any—

Appeals to
Tribunal.

(a) order or decision of the Authority or Registrar, relating to registration of a variety; or

(b) order or decision of the Registrar relating to registration as an agent or a licensee of a variety; or

(c) order or decision of the Authority relating to claim for benefit sharing; or

(d) order or decision of the Authority regarding revocation of compulsory licence or modification of compulsory licence; or

(e) order or decision of the Authority regarding payment of compensation, made under this Act or the rules made thereunder.

(2) Every such appeal shall be preferred by a petition in writing and shall be in such form and shall contain such particulars as may be prescribed.

(3) The Tribunal in disposing of an appeal under this section shall have the power to make any order which the Authority or the Registrar could make under this Act.

57. (1) The Tribunal may, after giving both the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit.

Orders of
Tribunal.

(2) The Tribunal may, at any time within thirty days from the date of the order, with a view to rectifying the mistake apparent from the record, amend any order passed by it under sub-section (1), and make such amendment if the mistake is brought to its notice by the appellant or the opposite party.

(3) In every appeal, the Tribunal may, where it is possible, hear and decide such appeal within a period of one year from the date of filing of the appeal.

(4) The Tribunal shall send a copy of any order passed under this section to the Registrar.

(5) The orders of the Tribunal under this Act shall be executable as a decree of a civil court.

58. (1) The powers and functions of the Tribunal may be exercised and discharged by Benches constituted by the Chairman of the Tribunal from among the Members thereof.

Procedure of
Tribunal.

(2) A Bench shall consist of one Judicial Member and one Technical Member.

(3) If the Members of a Bench differ in opinion on any point, they shall state the point or points on which they differ, and the case shall be referred to the Chairman for hearing on such point or points by one or more of the other Members and such point or point shall be decided according to the opinion of the majority of the Members who have heard the case, including those who first heard it.

(4) Subject to the provisions of this Act, the Tribunal shall have power to regulate its own procedure and the procedure of Benches thereof in all matters arising out of the exercise of its powers or the discharge of its functions, including the places at which the Benches shall hold their sittings.

(5) The Tribunal shall, for the purpose of discharging its functions, have all the powers which are vested in the Registrar under section 11, and any proceeding before the Tribunal shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 and for the purpose of section 196 of the Indian Penal Code, and the Tribunal shall be deemed to be a civil court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

45 of 1860.

2 of 1974.

(6) Notwithstanding anything contained in any other provisions of this Act or in any other law for the time being in force, no interim order (whether by way of injunction or stay or any other manner) shall be made on, or in, any proceedings relating to an appeal unless—

(a) copies of such appeal and of all documents in support of the plea for such interim order are furnished to the party against whom such appeal is made or proposed to be made; and

(b) opportunity is given to such party to be heard in the matter.

Transitional
provision.

59. Notwithstanding anything contained in this Act, till the establishment of the Tribunal under section 54, the Intellectual Property Appellate Board established under section 83 of the Trade Marks Act, 1999 shall exercise the jurisdiction, powers and authority conferred on the Tribunal under this Act subject to the modification that in any Bench of such Intellectual Property Appellate Board constituted for the purposes of this section, for the Technical Member referred to in sub-section (2) of section 84 of the said Trade Marks Act, the Technical Member shall be appointed under this Act and he shall be deemed to be the Technical Member for constituting the Bench under the said sub-section (2) of section 84 for the purposes of this Act.

47 of 1999.

CHAPTER IX

FINANCE, ACCOUNTS AND AUDIT

Grants by
Central
Government.

60. The Central Government may, after due appropriation made by Parliament by law in this behalf, make to the Authority grants and loans of such sums of money as the Central Government may think fit for being utilised for the purposes of this Act.

Authority
Fund.

61. (1) There shall be constituted a fund to be called the Protection of Plant Varieties Authority Account and there shall be credited thereto—

(a) all grants and loans made to the Authority by the Central Government under section 60;

(b) all fees received by the Authority and the Registrars except the annual fee determined on the basis of benefit or royalty under sub-section (1) of section 35;

(c) all sums received by the Authority from such other sources as may be decided upon by the Central Government.

(2) The Protection of Plant Varieties Authority Account shall be applied for meeting—

(a) the salaries, allowances and other remuneration of the Chairperson, officers and other employees of the Authority and allowances, if any, payable to the members;

(b) the other expenses of the Authority in connection with the discharge of its functions and for purposes of this Act.

62. (1) The Authority shall prepare a budget, maintain proper accounts and other relevant records (including the accounts and other relevant records of the Gene Fund) and prepare an annual statement of accounts in such form as may be prescribed by the Central Government in consultation with the Comptroller and Auditor-General of India.

Budget,
accounts and
audit.

(2) The accounts of the Authority shall be audited by the Comptroller and Auditor-General of India at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the Authority to the Comptroller and Auditor-General of India.

(3) The Comptroller and Auditor-General of India and any other person appointed by him in connection with the audit of the accounts of the Authority shall have the same rights and privileges and authority in connection with such audit as the Comptroller and Auditor-General of India generally has in connection with the audit of the Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the Authority.

(4) The accounts of the Authority as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf together with the audit report thereon shall be forwarded annually to the Central Government and that Government shall cause the same to be laid before each House of Parliament.

63. The Chairperson shall exercise such financial and administrative powers over the functions of the Authority as may be prescribed:

Financial and
administrative
powers of
Chairperson.

Provided that the Chairperson shall have the authority to delegate such of his financial and administrative powers as he may think fit to a member or any other officer of the Authority subject to the condition that the member or such other officer shall, while exercising such delegated powers, continue to be under the direction, control and supervision of the Chairperson.

CHAPTER X

INFRINGEMENT, OFFENCES, PENALTIES AND PROCEDURE

Infringement

64. Subject to the provisions of this Act, a right established under this Act is infringed by a person—

Infringement.

(a) who, not being the breeder of a variety registered under this Act or a registered agent or a registered licensee of that variety, sells, exports, imports or produces such variety without the permission of its breeder or within the scope of a registered licence or registered agency without permission of the registered licensee or registered agent, as the case may be;

(b) who uses, sells, exports, imports or produces any other variety giving such variety, the denomination identical with or deceptively similar to the denomination of a variety registered under this Act in such manner as to cause confusion in the mind of general people in identifying such variety so registered.

65. (1) No suit—

(a) for the infringement of a variety registered under this Act; or

(b) relating to any right in a variety registered under this Act,

Suit for
infringement,
etc.

shall be instituted in any court inferior to a District Court having jurisdiction to try the suit.

(2) For the purposes of clauses (a) and (b) of sub-section (1), "District Court having jurisdiction" shall mean the District Court within the local limits of whose jurisdiction the cause of action arises.

Relief in suits
for
infringement.

66. (1) The relief which a court may grant in any suit for infringement referred to in section 65 includes an injunction and at the option of the plaintiff, either damages or a share of the profits.

(2) The order of injunction under sub-section (1) may include an *ex parte* injunction or any interlocutory order for any of the following matters, namely:—

(a) discovery of documents;

(b) preserving of infringing variety or documents or other evidence which are related to the subject-matter of the suit,

(c) attachment of such property of the defendant which the court deems necessary to recover damages, costs or other pecuniary remedies which may be finally awarded to the plaintiff.

Opinion of
scientific
adviser.

67. (1) When the court has to form an opinion upon any question of fact or a scientific issue, such court may appoint an independent scientific adviser to suggest it or to inquire into and report upon the matter to enable it to form the desired opinion.

(2) The scientific adviser may be paid such remuneration or expenses as the court may fix.

Offences, penalties and procedure

Prohibition to
apply
denomination
of a registered
variety.

68. (1) No person other than the breeder of a variety registered under this Act or a registered licensee or a registered agent thereof shall use the denomination of that variety in the manner as may be prescribed.

(2) A person shall be deemed to apply the denomination of a variety registered under this Act who—

(a) applies it to the variety itself; or

(b) applies it to any package in or with which the variety is sold, or exposed for sale, or had in possession such package for sale or for any purpose of trade or production; or

(c) places, encloses or annexes the variety which is sold, or exposed for sale, or had in possession for sale or for any purpose of trade or production, in or with any package or other thing to which the denomination of such variety registered under this Act has been applied; or

(d) uses the denomination of such variety registered under this Act in any manner reasonably likely to lead to the belief that the variety or its propagating material in connection with which it is used is designated or described by that denomination; or

(e) in relation to the variety uses such denomination in any advertisement, invoice, catalogue, business letter, business paper, price list or other commercial document and such variety is delivered to a person in pursuance of a request or order made by reference to the denomination as so used.

(3) A denomination shall be deemed to be applied to a variety whether it is woven in, impressed on, or otherwise worked into, or annexed or affixed to, such variety or to any package or other thing.

Meaning of
falsely
applying
denomination
of a registered
variety.

69. (1) A person shall be deemed to falsely apply the denomination of a variety registered under this Act who, without the assent of the breeder of such variety,—

(a) applies such denomination or a deceptively similar denomination to any variety or any package containing such variety;

(b) uses any package bearing a denomination which is identical with or deceptively similar to the denomination of such variety registered under this Act, for the purpose

of packing, filling or wrapping therein any variety other than such variety registered under this Act.

(2) Any denomination of a variety registered under this Act falsely applied as mentioned in sub-section (1), is in this Act referred to as false denomination.

(3) In any prosecution for falsely applying a denomination of a variety registered under this Act the burden of proving the assent of the breeder of such variety shall lie on the accused.

70. (1) Any person who—

(a) applies any false denomination to a variety; or

(b) indicates the false name of a country or place or false name and address of the breeder of a variety registered under this Act in the course of trading such variety, shall, unless he proves that he acted, without intent to defraud, be punishable with imprisonment for a term which shall not be less than three months but which may extend to two years, or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both.

Penalty for applying false denomination, etc.

71. Any person who sells, or exposes for sale, or has in his possession for sale or for any purpose of trade or production of any variety to which any false denomination is applied or to which an indication of the country or place in which such variety was made or produced or the name and address of the breeder of such variety registered under this Act has been falsely made, shall, unless he proves—

Penalty for selling varieties to which false denomination is applied, etc.

(a) that having taken all reasonable precautions against committing an offence against this section, he had at the time of commission of the alleged offence no reason to suspect the genuineness of the denomination of such variety or that any offence had been committed in respect of indication of the country or place in which such variety registered under this Act, was made or produced or the name and address of the breeder of such variety;

(b) that, on demand by or on behalf of the prosecutor, he gave all the information in his possession with respect to the person from whom he obtained such variety; or

(c) that otherwise he had acted innocently,

be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years, or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both.

72. Whoever makes any representation with respect to the denomination of a variety or its propagating material or essentially derived variety or its propagating material not being variety or its propagating material or essentially derived variety or its propagating material registered under this Act, to the effect that it is a variety or its propagating material or essentially derived variety or its propagating material registered under this Act or otherwise represents any variety, or its propagating material, or essentially derived variety or its propagating material not registered under this Act to the effect that it is registered under this Act shall be punishable with imprisonment for a term, which shall not be less than six months but which may extend to three years, or with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees, or with both.

Penalty for falsely representing a variety as registered.

73. Whoever, having already been convicted of an offence under this Act is again convicted of such offence shall be punishable for the second and for every subsequent offence with imprisonment for a term which shall not be less than one year but which may extend to three years, or with fine which shall not be less than two lakh rupees but which may extend to twenty lakh rupees, or with both.

Penalty for subsequent offence.

No offence in certain cases.

74. The provisions of this Act relating to offences shall be subject to the right created as recognised by this Act and no act or omission shall be deemed to be an offence under the provisions of this Act if such act or omission is permissible under this Act.

Exemption of certain persons employed in ordinary course of business.

75. Where a person accused of an offence under this Act proves that in the ordinary course of his employment, he has acted without any intention to commit the offence and having taken all reasonable precautions against committing the offence charged, he had, at the time of the commission of the alleged offence, no reason to suspect the genuineness of the act so charged as an offence and on demand made by or on behalf of the prosecutor, he gave all the information in his possession with respect to the persons on whose behalf the offence was committed, he shall be acquitted.

Procedure where invalidity of registration is pleaded by the accused.

76. (1) Where the offence charged under this Act is in relation to a variety or its propagating material or essentially derived variety or its propagating material registered under this Act and the accused pleads that the registration of such variety or its propagating material or essentially derived variety or its propagating material, as the case may be, is invalid and the court is satisfied that such offence is *prima facie* not tenable, it shall not proceed with the charge but shall adjourn the proceedings for three months from the date on which the plea of the accused is recorded to enable the accused to file an application before the Registrar under this Act for the rectification of the Register on the ground that the registration is invalid.

(2) If the accused proves to the court that he has made such application within the time so limited or within such further time as the court for sufficient cause allow, the further proceedings in the prosecution shall stand stayed till the disposal of such application for rectification.

(3) If within a period of three months or within such extended time as may be allowed by the court, the accused fails to apply to the Registrar for rectification of the Register, the court shall proceed with the case as if the registration were valid.

(4) Where before institution of a complaint of an offence referred to in sub-section (1), any application for the rectification of the Register concerning the registration of the variety or its propagating material or essentially derived variety or its propagating material, as the case may be, in question on the ground of invalidity of such registration has already been properly made to and is pending before the Registrar, the court shall stay the further proceedings in the prosecution pending the disposal of the application aforesaid and shall determine the charge against the accused in conformity with the result of the application for rectification.

Offences by companies.

77. (1) If the person committing an offence under this Act is a company, the company as well as every person in charge of, and responsible to, the company for the conduct of its business at the time of the commission of the offence shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or that the commission of the offence is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

(a) “company” means any body corporate and includes a firm or other association of individuals; and

(b) “director”, in relation to a firm, means a partner in the firm.

CHAPTER XI

MISCELLANEOUS

78. Notwithstanding anything contained in this Act, the Authority or the Registrar shall—

Protection of security of India.

(a) not disclose any information relating to the registration of a variety or any application relating to the registration of a variety under this Act, which it considers prejudicial to the interest of the security of India; and

(b) take any action regarding the cancellation of registration of such varieties registered under this Act which the Central Government may by notification in the Official Gazette specify in the interest of the security of India.

Explanation.—For the purposes of this section, the expression "security of India" means any action necessary for the security of India which relates to the use of any produce of any variety registered under this Act directly or indirectly for the purposes of war or military establishment or for the purposes of war or other emergency in international relations.

79. Where a denomination of a variety or its propagating material or essentially derived variety or its propagating material registered under this Act has been applied to the variety or its propagating material or essentially derived variety or its propagating material, as the case may be, on sale or in the contract for sale of such variety or its propagating material or essentially derived variety or its propagating material, as the case may be, the seller shall be deemed to warrant that the denomination is a genuine denomination and not falsely applied, unless the contrary is expressed in writing signed by or on behalf of the seller and delivered at the time of the sale of the variety or its propagating material or essentially derived variety or its propagating material, as the case may be, or contract to and accepted by the buyer.

Implied warranty on sale of registered variety, etc.

80. If a person who is a party to a proceeding under this Act (not being a proceeding in a court) dies pending the proceeding, the Authority or the Registrar, as the case may be, may, on request, and on proof to the satisfaction of such Authority or Registrar, of the transmission of the interest of the deceased person, substitute in the proceedings his successor in interest in his place, or, if the Authority or the Registrar is of opinion that the interest of the deceased person is sufficiently represented by the surviving party, permit the proceedings to continue without the substitution of his successor in interest.

Death of party to a proceeding.

81. The registered agent or the registered licensee of a variety or its propagating material or essentially derived variety or its propagating material registered under this Act may institute appropriate proceedings in the court under this Act on behalf of the breeder of such variety or its propagating material or essentially derived variety or its propagating material, as the case may be, if such agent or licensee has been authorised in the prescribed manner by such breeder for doing so.

Right of registered agent and the registered licensee to institute suit.

82. (1) A copy of any entry in the Register, or of any document issued under this Act purporting to be certified by the Authority or the Registrar and sealed with the seal of such Authority or Registrar, as the case may be, shall be admitted in evidence in all courts and in all proceedings without further proof or production of the original.

Evidence of entry in Register, etc., and things done by the Authority and the Registrar.

(2) A certificate purporting to be under the hand of the Authority or the Registrar, as the case may be, as to any entry, matter or things that such Authority or Registrar is authorised by this Act or the rules to make or do shall be *prima facie* evidence of the entry having been made, and of the content thereof, or of the matter or things having been done or not done.

83. The Authority or the Registrar or any officer working under the Authority or the Registrar, as the case may be, shall not, in any legal proceedings, be compelled to produce the Register or any other document in its or his custody, the content of which can be proved by the production of a certified copy issued under this Act in the prescribed manner or to appear as a witness to prove the matter therein recorded unless by order of the court made for special cause.

Authority, Registrar and other officers not compellable to production of Register, etc.

Document open
to public
inspection.

84. Any person may, on an application to the Authority or the Registrar, as the case may be, and on payment of such fees as may be prescribed, obtain a certified copy of any entry in the Register or any other document in any proceedings under this Act pending before such Authority or Registrar or may inspect such entry or document.

Report of
Authority to
be placed
before
Parliament.
Government to
be bound.

85. The Central Government shall cause to be placed before both Houses of Parliament once a year a report regarding the performance of the Authority under this Act.

Proceedings
before
Authority or
Registrar.

86. The provisions of this Act shall be binding on the Government.

87. All proceedings before the Authority or the Registrar, as the case may be, relating to registration of variety or essentially derived variety, registration of agent, registration of licence or registration of compulsory licensing under this Act shall be deemed to be judicial proceedings within the meaning of sections 193 and 228, and for the purpose of section 196 of the Indian Penal Code and the Authority or the Registrar, as the case may be, shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

45 of 1860.

2 of 1974.

Protection of
action taken in
good faith.

88. No suit, prosecution or other legal proceeding shall lie against the Central Government, or against the Chairperson, or members, or the Registrar or any person acting under such Government, Authority or Registrar under the provisions of this Act, for anything which is in good faith done or intended to be done in pursuance of this Act or any rule, regulation, scheme or order made thereunder.

Bar of
jurisdiction.

89. No civil court shall have jurisdiction in respect of any matter which the Authority or the Registrar or the Tribunal is empowered by or under this Act to determine.

Members and
staff of
Authority, etc.,
to be public
servants.

90. The Chairperson, members, officers and other employees of the Authority and the Registrar-General and the officers and other employees working under him shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

45 of 1860.

Exemption
from tax on
wealth and
income.

91. Notwithstanding anything contained in the Wealth-tax Act, 1957, the Income-tax Act, 1961, or any other enactment for the time being in force relating to tax on wealth, income, profits or gains, the Authority shall not be liable to pay wealth-tax, income-tax or any other tax in respect of its wealth, income, profits or gains derived.

27 of 1957.

43 of 1961.

Act to have
overriding
effect.

92. The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

Power of
Central
Government to
give directions.

93. The Central Government may give directions to the Authority as it may think necessary in the public interest for the execution of all or any of the functions of the Authority under any provision of this Act or rules and regulations made thereunder.

Power to
remove
difficulties.

94. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as may appear to be necessary for removing the difficulty.

Provided that no order shall be made under this section after the expiry of two years from the date of commencement of this Act.

(2) Every order made under sub-section (1) shall be laid before each House of Parliament.

95. (1) The Authority may, with the previous approval of the Central Government, by notification in the Official Gazette, make regulations consistent with this Act and the rules made thereunder to carry out the provisions of this Act.

Power to make regulations.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:—

(a) duties and jurisdiction of the Registrars under sub-section (4) of section 12;

(b) the term of office and the conditions of service of the Registrars under sub-section (5) of section 12;

(c) the criteria of distinctiveness, uniformity and stability for registration of extant variety under sub-section (2) of section 15;

(d) the manner in which a single and distinct denomination to a variety shall be assigned by the applicant under sub-section (1) of section 17;

(e) the matters governing the assignment of denomination to a variety under sub-section (2) of section 17;

(f) the time within which the Registrar may require the applicant to propose another denomination under sub-section (3) of section 17;

(g) the form of application under clause (d) of sub-section (1) of section 18;

(h) the standards for evaluating seed during tests under sub-section (1) of section 19;

(i) the quantity of seeds or propagating material including parental line seeds to be deposited by a breeder and the time to be specified under sub-section (1) of section 27;

(j) the limitations and conditions subject to which a breeder may authorise a person to produce, sell, market or otherwise deal with variety under sub-section (2) of section 28;

(k) the form for authorisation under sub-section (3) of section 28.

96. (1) The Central Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.

Power of Central Government to make rules.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(i) the term of office of the Chairperson and the manner of filling the post under sub-section (6) of section 3;

(ii) the salary and allowances of the Chairperson and his conditions of service in respect of leave, pension, provident fund and other matters and the allowances for non-official members for attending the meeting under sub-section (8) of section 3;

(iii) the time and place of meetings of the Authority and the rules of procedure in regard to the transaction of business at its meetings [including the quorum at its meetings and the transaction of business of its Standing Committee appointed under sub-section (7) of section 3] under sub-section (1) of section 4;

(iv) the control and restriction regarding appointment of the officers and other employees of the Authority and the method of such appointment, salary and allowances and other conditions of service under section 6;

(v) the powers and duties of the Chairperson under section 7;

(vi) the terms and conditions subject to which and the manner in which the measures referred to in sub-section (1) of section 8 may provide for the registration of new extant varieties under clause (a) of sub-section (2) of that section;

(vii) the manner for arranging production and sale of the seed under clause (e) of sub-section (2) of section 8;

(viii) the orders by the Authority or the Registrar as to costs under clause (b) of section 11;

(ix) the salary and allowances of Registrar-General of Plant Varieties and the conditions of service in respect of his leave, pension, provident fund and other matters under sub-section (3) of section 12;

(x) the matters to be included in the National Register of Plant Varieties under sub-section (1) of section 13;

(xi) the manner of authorising a person under clause (e) of sub-section (1) of section 16;

(xii) the fees under clause (g) and the other particulars under clause (i) which shall accompany the application under sub-section (1) of section 18;

(xiii) the form of application under the proviso to sub-section (1) of section 18;

(xiv) the period within which after making application a proof of the right to make the application is to be furnished under sub-section (3) of section 18;

(xv) the fees to be deposited by the applicant under sub-section (2) of section 19;

(xvi) the manner and method of conducting the tests under sub-section (3) of section 19;

(xvii) the manner of advertising application, conditions or limitations and specifications of variety for registration including its photographs or drawings under sub-section (1) of section 21;

(xviii) the manner of giving notice and the fees payable therefor under sub-section (2) of section 21;

(xix) the manner of sending counter-statement under sub-section (4) of section 21;

(xx) the manner of submitting evidence and the time within which such evidence may be submitted under sub-section (6) of section 21;

(xxi) the documents and fees under sub-section (1) and the tests to be conducted and the procedure to be followed under sub-section (3) of section 23;

(xxii) the form of a certificate of registration and the other authority to which a copy thereof shall be sent under sub-section (8) of section 23;

(xxiii) the form of a certificate of registration and the other authority to which a copy thereof and the maximum time for issuing the certificate of registration under sub-section (2) of section 24;

(xxiv) the manner of giving notice to the applicant under sub-section (3) of section 24;

- (xxv) the fees for review and renewal under sub-section (6) of section 24;
- (xxvi) the contents of the certificate and the manner of publishing such contents and inviting claim of benefits sharing under sub-section (1) of section 26;
- (xxvii) the form for submitting claims of benefit sharing and the fees to be accompanied therewith under sub-section (2) of section 26;
- (xxviii) the manner in which and the time within which opposition to claims shall be submitted under sub-section (3) of section 26;
- (xxix) the manner of making reference under sub-section (7) of section 26;
- (xxx) the manner of making an application for registration for title and the fees to be accompanied therewith under sub-section (4) of section 28;
- (xxxi) the manner of referring the disputes regarding registration of entitlement under the proviso to sub-section (4) of section 28;
- (xxxii) the manner to enter into a certificate the brief conditions of entitlement under sub-section (5) of section 28;
- (xxxiii) the manner of making an application for varying the terms of registration under clause (a) of sub-section (9) of section 28;
- (xxxiv) the manner of making an application by the registered breeder and certain other for cancellation of terms of registration under clause (b) of sub-section (9) of section 28;
- (xxxv) the manner of application by any person other than the breeder, his successor, the registered agent or the registered licensee for cancellation of terms of registration under clause (c) of sub-section (9) of section 28;
- (xxxvi) the manner of application for cancellation of the terms of registration under clause (d) of sub-section (9) of section 28;
- (xxxvii) the manner of application for cancellation of the terms of registration under clause (e) of sub-section (9) of section 28;
- (xxxviii) the manner of issuing notice to the registered breeder of a variety or his successor or to each registered agent or registered licensee (not being the applicant) under sub-section (10) of section 28;
- (xxxix) the manner of giving notice to the Registrar under sub-section (1) of section 33;
- (xl) the manner of notifying to the registered agent or registered licensee under sub-section (2) of section 33;
- (xli) the period within which the notice of opposition under sub-section (3) of section 33 may be given;
- (xlii) the manner of making application under section 34;
- (xliii) the manner of depositing fee under sub-section (2) of section 35;
- (xliv) the manner of making application under sub-section (1) of section 36;

- (xlv) the manner of applying to the Registrar under sub-section (2) of section 36;
- (xlvi) the manner of giving notice under sub-section (4) of section 36;
- (xlvii) the manner of application under sub-section (1) of section 37;
- (xlviii) the manner of making application under sub-section (2) of section 37;
- (xlix) the manner to apply to the Registrar under sub-section (1) of section 38;
- (l) the manner of advertising application and to give notice to the Registrar, and the time from the date of the advertisement within which a person may give such notice under sub-section (2) of section 38;
- (li) the manner of advertising the denomination of the variety under sub-section (3) of section 38;
- (lii) the manner of recognition and reward from Gene Fund under clause (iii) of sub-section (1) of section 39;
- (liii) the manner of claiming compensation and filing of opposition under sub-section (2) of section 39;
- (liv) the manner of issuing notice and filing objection under sub-section (3) of section 41;
- (lv) the manner of receiving benefit sharing under clause (a) of sub-section (1) of section 45;
- (lvi) the manner of applying Gene Fund under sub-section (2) of section 45;
- (lvii) the particulars to be contained in the application under sub-section (2) of section 47;
- (lviii) the authority and the manner in which such authority shall make available to the compulsory licensee the reproduction material of the variety under section 50;
- (lix) the form for making application under sub-section (1) of section 52;
- (lx) the period within which an appeal shall be preferred under sub-section (1) of section 56;
- (lxi) the form of petition and the particulars which such petition shall contain under sub-section (2) of section 56;
- (lxii) the form for preparing annual statement of accounts under sub-section (1) of section 62;
- (lxiii) the financial and administrative powers which the Chairperson shall exercise under section 63;
- (lxiv) the manner of using the denomination of a variety under sub-section (1) of section 68;
- (lxv) the manner of authorising registered agent or registered licensee under section 81;
- (lxvi) the manner of issuing certified copy of content of Register or any other document under section 83;
- (lxvii) the fees payable for obtaining a certified copy of, or to inspect, any entry in the Register or any other document under section 84;

(lxviii) any other matter which is to be, or may be, prescribed or in respect of which this Act makes no provision or makes insufficient provision and provision is, in the opinion of the Central Government, necessary for the proper implementation of this Act.

97. Every rule and every regulation and every scheme made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or scheme or both Houses agree that the rule or regulation or scheme should not be made, the rule or regulation or scheme shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation or scheme.

Rules,
regulations
and schemes
to be laid
before
Parliament.

Sd/-

DR. SUBHASH C. JAIN,
Secretary to the Govt. of India.

By order and in the name of the Governor of Gujarat,

V. M. KOTHARE,
Secretary to Government.

GOVERNMENT CENTRAL PRESS, GANDHINAGAR.



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The Gujarat Government Gazette EXTRAORDINARY

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Separate paging is given to this Part in order that it may be filed as a Separate Compilation.

PART - VI

Acts of Parliament and Ordinances Promulgated by the President

LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT

Sachivalaya, Gandhinagar, 11th February, 2002.

No. RPB/10/2002/Ord-102/271/E.—The following ordinance promulgated by the President and published in the Gazette of India, Extra-ordinary, Part II, Section 1, dated the 10th January, 2002 is republished for general information:—

GOVERNMENT OF INDIA

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS,
(Legislative Department)

New Delhi, the 10th January, 2002/Pausa 20, 1923 (Saka)

THE CENTRAL EXCISE TARIFF (AMENDMENT) ORDINANCE, 2002.

No. 1 OF 2002

Promulgated by the President in the fifty-second Year of the Republic of India.

An Ordinance further to amend the Central Excise Tariff Act, 1985.

WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:—

1. (1) This Ordinance may be called the Central Excise Tariff (Amendment) Ordinance, 2002.

(2) It shall come into force at once.

Short title
and com-
mencement.

Amendment
of section 3
of Act 5 of
1986.

2. In section 3 of the Central Excise Tariff Act, 1985, in sub-section (1), for clause (b), the following clause shall be substituted, namely:—

“(b) in any other case, a rate of duty as it thinks necessary.”.

Sd/—

K. R. NARAYANAN,
President.

Sd/—

SUBHASH C. JAIN,
Secy. to the Govt. of India.

By order and in the name of the Governor of Gujarat,

V. M. KOTHARE,
Secretary to Government.

GOVERNMENT CENTRAL PRESS, GANDHINAGAR.



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PART - VI

Acts of Parliament and Ordinances Promulgated by the President

LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT

Sachivalaya, Gandhinagar, Dated the 1st May, 2002.

No. RPB/11/2002/ACT-5401/95/E :- The following Act of Parliament is republished for general information :-

GOVERNMENT OF INDIA

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS

(Legislative Department)

New Delhi, the 12th December, 2001/Agrahayan 21, 1923 (Saka)

The following Act of Parliament received the assent of the President on the 11th December, 2001 and is hereby published for general information :-

THE EXPLOSIVE SUBSTANCES (AMENDMENT) ACT, 2001

(Act No. 54 of 2001)

(11th December, 2001)

AN ACT

to amend the Explosive Substances Act, 1908.

BE it enacted by Parliament in the Fifty-second Year of the Republic of India as follows:—

1. (1) This Act may be called the Explosive Substances (Amendment) Act, 2001.

Short title and
commence-
ment.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

6 of 1908.

2. In the Explosive Substances Act, 1908 (hereinafter referred to as the principal Act), for sections 2 to 5, the following sections shall be substituted, namely:—

Substitution of
new sections
for sections 2
to 5.

2. In this Act,—

Definitions.

(a) the expression "explosive substance" shall be deemed to include any materials for making any explosive substance; also any apparatus, machine, implement or material used, or intended to be used, or adapted for causing, or aiding in causing, any explosion in or with any explosive substance; also any part of any such apparatus, machine or implement;

(b) the expression "special category explosive substance" shall be deemed to include research development explosive (RDX), penta erythritol tetra nitrate

(PETN), high melting explosive (HMX), tri nitro toluene (TNT), low temperature plastic explosive (LTPE), composition exploding (CE) (2, 4, 6 phenyl methyl nitramine or tetryl), OCTOL (mixture of high melting explosive and tri nitro toluene), plastic explosive kirkee-1 (PEK-1) and RDX/TNT compounds and other similar type of explosives and a combination thereof and remote control devices causing explosion and any other substance and a combination thereof which the Central Government may, by notification in the Official Gazette, specify for the purposes of this Act.

Punishment
for causing
explosion
likely to
endanger life
or property.

3. Any person who unlawfully and maliciously causes by—

(a) any explosive substance an explosion of a nature likely to endanger life or to cause serious injury to property shall, whether any injury to person or property has been actually caused or not, be punished with imprisonment for life, or with rigorous imprisonment of either description which shall not be less than ten years, and shall also be liable to fine;

(b) any special category explosive substance an explosion of a nature likely to endanger life or to cause serious injury to property shall, whether any injury to person or property has been actually caused or not, be punished with death, or rigorous imprisonment for life, and shall also be liable to fine.

Punishment
for attempt
to cause
explosion, or
for making or
keeping
explosive
with intent to
endanger life
or property.

4. Any person who unlawfully and maliciously—

(a) does any act with intent to cause by an explosive substance or special category explosive substance, or conspires to cause by an explosive substance or special category explosive substance, an explosion of a nature likely to endanger life or to cause serious injury to property; or

(b) makes or has in his possession or under his control any explosive substance or special category explosive substance with intent by means thereof to endanger life, or cause serious injury to property, or to enable any other person by means thereof to endanger life or cause serious injury to property in India,

shall, whether any explosion does or does not take place and whether any injury to person or property has been actually caused or not, be punished,—

(i) in the case of any explosive substance, with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine;

(ii) in the case of any special category explosive substance, with rigorous imprisonment for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Punishment
for making or
possessing
explosives
under
suspicious
circum-
stances.

5. Any person who makes or knowingly has in his possession or under his control any explosive substance or special category explosive substance, under such circumstances as to give rise to a reasonable suspicion that he is not making it or does not have it in his possession or under his control for a lawful object, shall, unless he can show that he made it or had it in his possession or under his control for a lawful object, be punished,—

(a) in the case of any explosive substance, with imprisonment for a term which may extend to ten years, and shall also be liable to fine;

(b) in the case of any special category explosive substance, with rigorous imprisonment for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

3. In section 7 of the principal Act, for the words "Central Government", the words "District Magistrate" shall be substituted.

Amendment of
section 7.

Sd/-

Dr. SUBHASH C. JAIN,
Secretary to the Government of India.

By order and in the name of the Governor of Gujarat,

V. M. KOTHARE, .
Secretary to Government.

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PART - VI

Acts of Parliament and Ordinances Promulgated by the President

LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT

Sachivalaya, Gandhinagar, Dated the 1st May, 2002.

No. RPB/12/2002/ACT-5501/93/E :- The following Act of Parliament is republished for general information :-

GOVERNMENT OF INDIA

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS

(Legislative Department)

New Delhi, the 14th December, 2001/Agrahayan 23, 1923 (Saka)

The following Act of Parliament received the assent of the President on the 13th December, 2001 and is hereby published for general information :-

THE NATIONAL COMMISSION FOR SAFAI KARAMCHARIS

(AMENDMENT) ACT, 2001

(Act No. 55 of 2001)

(13th December, 2001)

AN ACT

further to amend the National Commission for Safai Karamcharis Act, 1993.

BE it enacted by Parliament in the Fifty-second Year of the Republic of India as follows:—

1. This Act may be called the National Commission for Safai Karamcharis (Amendment) Act, 2001.

Short title.

64 of 1993.

2. In the National Commission for Safai Karamcharis Act, 1993 (hereinafter referred to as the principal Act), in section 1, in sub-section (4), for the figures, letters and words "31st day of March, 2002", the figures, letters and words "29th day of February, 2004" shall be substituted.

Amendment of section 1.

3. In section 4 of the principal Act, after sub-section (1), the following sub-section shall be inserted, namely:—

Amendment of section 4.

"(1A) Notwithstanding anything contained in sub-section (1), the Chairperson, Vice-Chairperson and every Member appointed on or after the 16th day of February, 2001, shall hold office for a period not exceeding three years from the date of assumption of his office or up to the 29th day of February, 2004, whichever is earlier."

Sd/-
Dr. SUBHASH C. JAIN,
Secretary to the Government of India.

By order and in the name of the Governor of Gujarat,

V. M. KOTHARE,
Secretary to Government.

GOVERNMENT CENTRAL PRESS, GANDHINAGAR.



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PART - VI

Acts of Parliament and Ordinances Promulgated by the President

LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT

Sachivalaya, Gandhinagar, Dated the 1st May, 2002.

No. RPB/13/2002/ACT-5601/96/E :- The following Act of Parliament is republished for general information :-

GOVERNMENT OF INDIA

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS

(Legislative Department)

New Delhi, the 14th December, 2001/Agrahayan 23, 1923 (Saka)

The following Act of Parliament received the assent of the President on the 13th December, 2001 and is hereby published for general information :-

THE CINE-WORKERS WELFARE FUND (AMENDMENT) ACT, 2001

(Act No. 56 of 2001)

(13th December, 2001)

AN ACT

further to amend the Cine-workers Welfare Fund Act, 1981.

BE it enacted by Parliament in the Fifty-second Year of the Republic of India as follows:—

1. (1) This Act may be called the Cine-workers Welfare Fund (Amendment) Act, 2001.

Short title and
commence-
ment.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. In section 2 of the Cine-workers Welfare Fund Act, 1981, in clause (b), for sub-clause (ii), the following sub-clause shall be substituted, namely:—

Amendment of
section 2 of
Act 33 of
1981.

“(ii) whose remuneration with respect to such employment in or in connection with the production of each of any five feature films, not being less than the monthly remuneration or lump sum remuneration stipulated prior to the commencement of the Cine-workers Welfare Fund (Amendment) Act, 2001, does not exceed such sum, whether monthly or by way of lump sum or instalments, as may be specified by the Central Government by notification in the Official Gazette;”

Sd/-

Dr. SUBHASH C. JAIN,

Secretary to the Government of India.

By order and in the name of the Governor of Gujarat,

V. M. KOTHARE,

Secretary to Government.

GOVERNMENT CENTRAL PRESS, GANDHINAGAR.



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PART - VI

Acts of Parliament and Ordinances Promulgated by the President

LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT

Sachivalaya, Gandhinagar, Dated the 1st May, 2002.

No. RPB/14/2002/ACT-5701/94/E :- The following Act of Parliament is republished for general information :-

GOVERNMENT OF INDIA

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS

(Legislative Department)

New Delhi, the 24th December, 2001/Pausa 3, 1923 (Saka)

The following Act of Parliament received the assent of the President on the 22nd December, 2001 and is hereby published for general information :-

THE COMPANIES (AMENDMENT) ACT, 2001

(Act No. 57 of 2001)

(22nd December, 2001)

AN ACT

further to amend the Companies Act, 1956.

BE it enacted by Parliament in the Fifty-second Year of the Republic of India as follows:—

1. (1) This Act may be called the Companies (Amendment) Act, 2001.

(2) It shall be deemed to have come into force on the 23rd day of October, 2001.

2. In section 77A of the Companies Act, 1956 (hereinafter referred to as the principal Act),—

(a) in sub-section (2), in clause (b), the following shall be inserted, namely:—

‘Provided that nothing contained in this clause shall apply in any case where—

(A) the buy-back is or less than ten per cent. of the total paid-up equity capital and free reserves of the company; and

Short title and commencement.

Amendment of section 77A.

1 of 1956.

(B) such buy-back has been authorised by the Board by means of a resolution passed at its meeting:

Provided further that no offer of buy-back shall be made within a period of three hundred and sixty-five days reckoned from the date of the preceding offer of buy-back, if any.

Explanation.—For the purposes of this clause, the expression “offer of buy-back” means the offer of such buy-back made in pursuance of the resolution of the Board referred to in the first proviso;”;

(b) in sub-section (4), for the words “special resolution”, the words “special resolution or a resolution passed by the Board” shall be substituted;

(c) in sub-section (6), after the words, brackets, letter and figure “special resolution under clause (b) of sub-section (2)”, the words, brackets and letter “or the Board has passed a resolution under the first proviso to clause (b) of that sub-section” shall be inserted;

(d) in sub-section (8), for the words “within a period of twenty-four months”, the words “within a period of six months” shall be substituted.

Amendment
of section
292.

3. In section 292 of the principal Act, in sub-section (1), after clause (a), the following clause shall be inserted, namely:—

“(aa) the power to authorise the buy-back referred to in the first proviso to clause (b) of sub-section (2) of section 77A;”

Repeal and
saving.

4. (1) The Companies (Amendment) Ordinance, 2001 is hereby repealed.

Ord.7 of 2001.

(2) Notwithstanding such repeal, anything done or any action taken under the principal Act, as amended by the said Ordinance, shall be deemed to have been done or taken under the corresponding provisions of the principal Act, as amended by this Act.

Sd/-

Dr. SUBHASH C. JAIN,
Secretary to the Government of India.

By order and in the name of the Governor of Gujarat,

V. M. KOTHARE,
Secretary to Government.

GOVERNMENT CENTRAL PRESS, GANDHINAGAR.



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PART - VI

Acts of Parliament and Ordinances Promulgated by the President

LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT

Sachivalaya, Gandhinagar, Dated the 1st May, 2002.

No. RPB/15/2002/Const-85/92/E :- The following Act of Parliament is republished for general information :-

GOVERNMENT OF INDIA

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS

(Legislative Department)

New Delhi, the 4th January, 2002/Pausa 14, 1923 (Saka)

The following Act of Parliament received the assent of the President on the 4th January, 2002 and is hereby published for general information :-

THE CONSTITUTION (EIGHTY-FIFTH AMENDMENT) ACT, 2001

(4th January, 2002)

AN ACT

further to amend the Constitution of India.

BE it enacted by Parliament in the Fifty-second Year of the Republic of India as follows:—

1. (1) This Act may be called the Constitution (Eighty-fifth Amendment) Act, 2001.

(2) It shall be deemed to have come into force on the 17th day of June, 1995.

Short title and
commence-
ment.

Amendment
of article 16.

2. In article 16 of the Constitution, in clause (4A), for the words "in matters of promotion to any class", the words "in matters of promotion, with consequential seniority, to any class" shall be substituted.

Sd/-

Dr. SUBHASH C. JAIN,
Secretary to the Government of India.

By order and in the name of the Governor of Gujarat,

V. M. KOTHARE,
Secretary to Government.

GOVERNMENT CENTRAL PRESS, GANDHINAGAR.

PART - VI

Acts of Parliament and Ordinances promulgated by the President
LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT
Sachinvalaya, Gandhinagar, Bared the 1st May, 2002

No. FPM/15202/Coast-852926 - The following Act of Parliament is
republished for general information:-

GOVERNMENT OF INDIA
MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS

(Legislative Department)
New Delhi, the 4th January, 2002 (24th)

The following Act of Parliament received the assent of the President on
the 4th January, 2002 and is hereby published for general information:-

THE CONSTITUTION (EIGHTY-FIFTH AMENDMENT) ACT, 2001
(1st January, 2002)

AWACT
Further to amend the Constitution of India.

It is enacted by Parliament in the Fifty-second Year of the Republic of India as
follows:-

1. (1) This Act may be called the Constitution (Eighty-Fifth Amendment) Act, 2001.
(2) It shall be deemed to have come into force on the 17th day of June, 1992.



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Acts of Parliament and Ordinances Promulgated by the President

LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT

Sachivalaya, Gandhinagar, Dated the 1st May, 2002.

No. RPB/16/2002/Act-102/91/E :- The following Act of Parliament is republished for general information :-

GOVERNMENT OF INDIA

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS

(Legislative Department)

New Delhi, the 4th January, 2002/Pausa 14, 1923 (Saka)

The following Act of Parliament received the assent of the President on the 4th January, 2002 and is hereby published for general information :-

THE ESSENTIAL SERVICES (MAINTENANCE) ORDINANCE

REPEAL ACT, 2001

(Act No. 1 of 2002)

(4th January, 2002)

AN ACT

to repeal the Essential Services (Maintenance) Ordinance, 1941.

BE it enacted by Parliament in the Fifty-second Year of the Republic of India as follows:—

1. This Act may be called the Essential Services (Maintenance) Ordinance Repeal Act, 2001.

Short title.

2. The Essential Services (Maintenance) Ordinance, 1941 is hereby repealed.

Repeal
of Ord.
XI of 1941.

Sd/-

Dr. SUBHASH C. JAIN,
Secretary to the Government of India.

By order and in the name of the Governor of Gujarat,

V. M. KOTHARE,
Secretary to Government.



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PART - VI

Acts of Parliament and Ordinances Promulgated by the President

LEGISLATIVE AND PARLIAMENTARY AFFAIRS

DEPARTMENT,

Sachivalaya, Gandhinagar. Dated :

No. RPB/21/2002/Const./84/E :- The following Act of Parliament is republished for general information :-

Government of India,

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS,

(Legislative Department),

New Delhi, the 22nd February, 2002/Phalguna 3, 1923 (SAKA)

The following Act of Parliament received the assent of the President on the 21st February, 2002 and is hereby published for general information

THE CONSTITUTION (EIGHTY-FOURTH AMENDMENT) ACT, 2001

[21st February, 2002.]

An Act further to amend the Constitution of India.

BE it enacted by Parliament in the Fifty-second Year of the Republic of India as follows:—

1. This Act may be called the Constitution (Eighty-fourth Amendment) Act, 2001. Short title.
2. In article 55 of the Constitution, in the proviso to the *Explanation*, for the figures "2000", the figures "2026" shall be substituted. Amendment of article 55.
3. In article 81 of the Constitution, in the proviso to clause (3),— Amendment of article 81.
 - (i) for the figures "2000", the figures "2026" shall be substituted;

(ii) for the words and figures "be construed as a reference to the 1971 census.", the following shall be substituted, namely:—

"be construed,—

(i) for the purposes of sub-clause (a) of clause (2) and the proviso to that clause, as a reference to the 1971 census; and

(ii) for the purposes of sub-clause (b) of clause (2) as a reference to the 1991 census."

Amendment
of article 82.

4. In article 82 of the Constitution, in the third proviso,—

(i) for the figures "2000", the figures "2026" shall be substituted;

(ii) for the words "readjust the allocation of seats in the House of the People to the States and the division of each State into territorial constituencies under this article.", the following shall be substituted, namely:—

"readjust—

(i) the allocation of seats in the House of the People to the States as readjusted on the basis of the 1971 census; and

(ii) the division of each State into territorial constituencies as may be readjusted on the basis of the 1991 census,
under this article."

Amendment
of article 170.

5. In article 170 of the Constitution,—

(a) in clause (2), in the proviso to the *Explanation*, for the figures "2000" and "1971", the figures "2026" and "1991" shall respectively be substituted;

(b) in the third proviso to clause (3),—

(i) for the figures "2000", the figures "2026" shall be substituted;

(ii) for the words "readjust the total number of seats in the Legislative Assembly of each State and the division of such State into territorial constituencies under this clause.", the following shall be substituted, namely:—

"readjust—

(i) the total number of seats in the Legislative Assembly of each State as readjusted on the basis of the 1971 census; and

(ii) the division of such State into territorial constituencies as may be readjusted on the basis of the 1991 census,
under this clause."

Amendment
of article 330.

6. In article 330 of the Constitution, in the proviso to the *Explanation*, for the figures "2000" and "1971", the figures "2026" and "1991" shall respectively be substituted.

Amendment
of article 332.

7. In article 332 of the Constitution,—

(a) in clause (3A), for the figures "2000", the figures "2026" shall be substituted;

(b) in clause (3B), for the figures "2000", the figures "2026" shall be substituted.

SUBHASH C. JAIN,
Secy. to the Govt. of India.

By order and in the name of the Governor of Gujarat,

V. M. KOTHARE,
Secretary to Government.



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PART - VI

Acts of Parliament and Ordinances Promulgated by the President

LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT,

Sachivalaya, Gandhinagar. Dated :

No. RPB/22/2002/Act-2202/E :-The following Act of Parliament is republished for general information :-

Government of India,

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS,
(Legislative Department),

New Delhi, the 24th May, 2002/Jyastha 3, 1924 (SAKA)

The following Act of Parliament received the assent of the President on the 23rd May, 2002 and is hereby published for general information :-
THE CODE OF CIVIL PROCEDURE (AMENDMENT) ACT, 2002

AN
(Act No. 22 of 2002) ACT (23rd May, 2002)

further to amend the Code of Civil Procedure, 1908 and to provide for matters connected therewith or incidental thereto.

Be it enacted by Parliament in the Fifty-third Year of the Republic of India as follows:—

1. (1) This Act may be called the Code of Civil Procedure (Amendment) Act, 2002.

Short title and
commence-
ment.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different provisions of this Act and for different States or for different parts thereof.

5 of 1908.

2. In section 39 of the Code of Civil Procedure, 1908 (hereinafter referred to as the principal Act), after sub-section (3), the following sub-section shall be inserted, namely:—

Amendment
of section
39.

"(4) Nothing in this section shall be deemed to authorise the Court which passed a decree to execute such decree against any person or property outside the local limits of its jurisdiction."

Amendment of section 64. 3. Section 64 of the principal Act shall be renumbered as sub-section (1) of that section and after sub-section (1) as so renumbered, the following sub-section shall be inserted, namely:—

"(2) Nothing in this section shall apply to any private transfer or delivery of the property attached or of any interest therein, made in pursuance of any contract for such transfer or delivery entered into and registered before the attachment."

Substitution of new section for section 100A.

4. For section 100A of the principal Act [as substituted by section 10 of the Code of Civil Procedure (Amendment) Act, 1999], the following section shall be substituted, namely:—

46 of 1999.

No further appeal in certain cases.

"100A. Notwithstanding anything contained in any Letters Patent for any High Court or in any instrument having the force of law or in any other law for the time being in force, where any appeal from an original or appellate decree or order is heard and decided by a Single Judge of a High Court, no further appeal shall lie from the judgment and decree of such Single Judge."

Substitution of new section for section 102.

5. For section 102 of the principal Act [as substituted by section 11 of the Code of Civil Procedure (Amendment) Act, 1999], the following section shall be substituted, namely:—

46 of 1999.

No second appeal in certain cases.

"102. No second appeal shall lie from any decree, when the subject matter of the original suit is for recovery of money not exceeding twenty-five thousand rupees."

Amendment of Order V.

6. In the First Schedule to the principal Act (hereinafter referred to as the First Schedule), in Order V,—

(i) in rule 1, for sub-rule (1) [as substituted by clause (i) of section 15 of the Code of Civil Procedure (Amendment) Act, 1999], the following sub-rule shall be substituted, namely:—

46 of 1999.

"(1) When a suit has been duly instituted, a summons may be issued to the defendant to appear and answer the claim and to file the written statement of his defence, if any, within thirty days from the date of service of summons on that defendant:

Provided that no such summons shall be issued when a defendant has appeared at the presentation of plaint and admitted the plaintiff's claim:

Provided further that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the same on such other day as may be specified by the Court, for reasons to be recorded in writing, but which shall not be later than ninety days from the date of service of summons."

(ii) for rule 9 [as substituted by clause (v) of section 15 of the Code of Civil Procedure (Amendment) Act, 1999], the following rules shall be substituted, namely:—

46 of 1999.

Delivery of summons by Court.

"9. (1) Where the defendant resides within the jurisdiction of the Court in which the suit is instituted, or has an agent resident within that jurisdiction who is empowered to accept the service of the summons, the summons shall, unless the Court otherwise directs, be delivered or sent either to the proper officer to be served by him or one of his subordinates or to such courier services as are approved by the Court.

(2) The proper officer may be an officer of a Court other than that in which the suit is instituted, and, where he is such an officer, the summons may be sent to him in such manner as the Court may direct.

(3) The services of summons may be made by delivering or transmitting a copy thereof by registered post acknowledgment due, addressed to the

defendant or his agent empowered to accept the service or by speed post or by such courier services as are approved by the High Court or by the Court referred to in sub-rule (1) or by any other means of transmission of documents (including fax message or electronic mail service) provided by the rules made by the High Court:

Provided that the service of summons under this sub-rule shall be made at the expenses of the plaintiff.

(4) Notwithstanding anything contained in sub-rule (1), where a defendant resides outside the jurisdiction of the Court in which the suit is instituted, and the Court directs that the service of summons on that defendant may be made by such mode of service of summons as is referred to in sub-rule (3) (except by registered post acknowledgment due), the provisions of rule 21 shall not apply.

(5) when an acknowledgment or any other receipt purporting to be signed by the defendant or his agent is received by the Court or postal article containing the summons is received back by the Court with an endorsement purporting to have been made by a postal employee or by any person authorised by the courier service to the effect that the defendant or his agent had refused to take delivery of the postal article containing the summons or had refused to accept the summons by any other means specified in sub-rule (3) when tendered or transmitted to him, the Court issuing the summons shall declare that the summons had been duly served on the defendant:

Provided that where the summons was properly addressed, pre-paid and duly sent by registered post acknowledgment due, the declaration referred to in this sub-rule shall be made notwithstanding the fact that the acknowledgment having been lost or mislaid, or for any other reason, has not been received by the Court within thirty days from the date of issue of summons.

(6) The High Court or the District Judge, as the case may be, shall prepare a panel of courier agencies for the purposes of sub-rule (1).

9A. (1) The Court may, in addition to the service of summons under rule 9, on the application of the plaintiff for the issue of a summons for the appearance of the defendant, permit such plaintiff to effect service of such summons on such defendant and shall, in such a case, deliver the summons to such plaintiff for service.

Summons
given to the
plaintiff for
service.

(2) The service of such summons shall be effected by or on behalf of such plaintiff by delivering or tendering to the defendant personally a copy thereof signed by the Judge or such officer of the Court as he may appoint in this behalf and sealed with the seal of the Court or by such mode of service as is referred to in sub-rule (3) of rule 9.

(3) The provisions of rules 16 and 18 shall apply to a summons personally served under this rule as if the person effecting service were a serving officer.

(4) If such summons, when tendered, is refused or if the person served refuses to sign an acknowledgment of service or for any reason such summons cannot be served personally, the Court shall, on the application of the party, re-issue such summons to be served by the Court in the same manner as a summons to a defendant."

7. In the First Schedule, in Order VI, for rules 17 and 18 [as they stood immediately before their omission by clause (iii) of section 16 of the Code of Civil Procedure (Amendment) Act, 1999] the following rules shall be substituted, namely:—

Amendment
of Order VI.

"17. The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:

Amendment
of pleadings.

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.

18. If a party who has obtained an order for leave to amend does not amend accordingly within the time limited for that purpose by the order, or if no time is

Failure to
amend after
Order.

thereby limited then within fourteen days from the date of the order, he shall not be permitted to amend after the expiration of such limited time as aforesaid or of such fourteen days, as the case may be, unless the time is extended by the Court."

Amendment
of Order VII.

8. In the First Schedule, in Order VII,—

(i) for rule 9 [as substituted by clause (i) of section 17 of the Code of Civil Procedure (Amendment) Act, 1999], the following rule shall be substituted, namely:— 46 of 1999.

Procedure on
admitting
plaint.

"9. Where the Court orders that the summons be served on the defendants in the manner provided in rule 9 of Order V, it will direct the plaintiff to present as many copies of the plaint on plain paper as there are defendants within seven days from the date of such order along with requisite fee for service of summons on the defendants.";

(ii) in rule 11, for sub-clauses (f) and (g) [as inserted by clause (ii) of section 17 of the Code of Civil Procedure (Amendment) Act, 1999], the following sub-clause shall be substituted, namely:— 46 of 1999.

"(f) where the plaintiff fails to comply with the provisions of rule 9.";

(iii) in rule 14 [as substituted by clause (iii) of section 17 of the Code of Civil Procedure (Amendment) Act, 1999], for sub-rule (3), the following sub-rule shall be substituted, namely:— 46 of 1999.

"(3) A document which ought to be produced in Court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint but is not produced or entered accordingly, shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.";

(iv) rule 18 [as amended by clause (v) of section 17 of the Code of Civil Procedure (Amendment) Act, 1999] shall be omitted. 46 of 1999.

Amendment
of Order VIII.

9. In the First Schedule, in Order VIII,—

(i) for rule 1 [as substituted by clause (i) of section 18 of the Code of Civil Procedure (Amendment) Act, 1999], the following rule shall be substituted, namely:— 46 of 1999.

Written
statement.

"1. The defendant shall, within thirty days from the date of service of summons on him, present a written statement of his defence:

Provided that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the same on such other day, as may be specified by the Court, for reasons to be recorded in writing, but which shall not be later than ninety days from the date of service of summons.";

(ii) in rule 1A [as inserted by clause (ii) of section 18 of the Code of Civil Procedure (Amendment) Act, 1999], for sub-rule (3), the following sub-rule shall be substituted, namely:— 46 of 1999.

"(3) A document which ought to be produced in Court by the defendant under this rule, but, is not so produced shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.";

(iii) for rules 9 and 10 [as they stood immediately before their omission by clause (iii) of section 18 of the Code of Civil Procedure (Amendment) Act, 1999], the following rules shall be substituted, namely:— 46 of 1999.

"9. No pleading subsequent to the written statement of a defendant other than by way of defence to set-off or counter-claim shall be presented except by the leave of the Court and upon such terms as the Court thinks fit; but the Court may at any time require a written statement or additional written statement from any of the parties cut and fix a time of not more than thirty days for presenting the same.

Subsequent pleadings.

10. Where any party from whom a written statement is required under rule 1 or rule 9 fails to present the same within the time permitted or fixed by the Court, as the case may be, the Court shall pronounce judgment against him, or make such order in relation to the suit as it thinks fit and on the pronouncement of such judgment a decree shall be drawn up."

Procedure when party fails to present written statement called for by Court.

46 of 1999. 10. In the First Schedule, in Order IX, for rule 2 [as substituted by clause (i) of section 19 of the Code of Civil Procedure (Amendment) Act, 1999], the following rule shall be substituted, namely:—

Amendment of Order IX.

"2. Where on the day so fixed it is found that the summons has not been served upon the defendant in consequence of the failure of the plaintiff to pay the court-fee or postal charges, if any, chargeable for such service, or failure to present copies of the plaint as required by rule 9 of Order VII, the Court may make an order that the suit be dismissed:

Dismissal of suit where summons not served in consequence of plaintiff's failure to pay costs.

Provided that no such order shall be made, if notwithstanding such failure, the defendant attends in person or by agent when he is allowed to appear by agent on the day fixed for him to appear and answer."

46 of 1999. 11. In the First Schedule, in Order XIV, for rule 5 [as it stood immediately before its omission by clause (ii) of section 24 of the Code of Civil Procedure (Amendment) Act, 1999], the following rule shall be substituted, namely:—

Amendment of Order XIV.

"5. (1) The Court may at any time before passing a decree amend the issues or frame additional issues on such terms as it thinks fit, and all such amendments or additional issues as may be necessary for determining the matters in controversy between the parties shall be so made or framed.

Power to amend, and strike out, issues.

(2) The Court may also, at any time before passing a decree, strike out any issues that appear to it to be wrongly framed or introduced."

12. In the First Schedule, in Order XVIII,—

Amendment of Order XVIII.

(a) in rule 2, after sub-rule (3), the following sub-rules shall be inserted, namely:—

"(3A) Any party may address oral arguments in a case, and shall, before he concludes the oral arguments, if any, submit if the Court so permits concisely and under distinct headings written arguments in support of his case to the Court and such written arguments shall form part of the record.

(3B) A copy of such written arguments shall be simultaneously furnished to the opposite party.

(3C) No adjournment shall be granted for the purpose of filing the written arguments unless the Court, for reasons to be recorded in writing, considers it necessary to grant such adjournment.

(3D) The Court shall fix such time-limits for the oral arguments by either of the parties in a case, as it thinks fit."

(b) for rule 4 [as substituted by clause (ii) of section 27 of the Code of Civil Procedure (Amendment) Act, 1999], the following rule shall be substituted, namely:— 46 of 1999.

Recording of evidence.

"4. (1) In every case, the examination-in-chief of a witness shall be on affidavit and copies thereof shall be supplied to the opposite party by the party who calls him for evidence:

Provided that where documents are filed and the parties rely upon the documents, the proof and admissibility of such documents which are filed along with affidavit shall be subject to the orders of the Court.

(2) The evidence (cross-examination and re-examination) of the witness in attendance, whose evidence (examination-in-chief) by affidavit has been furnished to the Court, shall be taken either by the Court or by the Commissioner appointed by it:

Provided that the Court may, while appointing a commission under this sub-rule, consider taking into account such relevant factors as it thinks fit.

(3) The Court or the Commissioner, as the case may be, shall record evidence either in writing or mechanically in the presence of the Judge or of the Commissioner, as the case may be, and where such evidence is recorded by the Commissioner he shall return such evidence together with his report in writing signed by him to the Court appointing him and the evidence taken under it shall form part of the record of the suit.

(4) The Commissioner may record such remarks as it thinks material respecting the demeanour of any witness while under examination:

Provided that any objection raised during the recording of evidence before the Commissioner shall be recorded by him and decided by the Court at the stage of arguments.

(5) The report of the Commissioner shall be submitted to the Court appointing the commission within sixty days from the date of issue of the commission unless the Court for reasons to be recorded in writing extends the time.

(6) The High Court or the District Judge, as the case may be, shall prepare a panel of Commissioners to record the evidence under this rule.

(7) The Court may by general or special order fix the amount to be paid as remuneration for the services of the Commissioner.

(8) The provisions of rules 16, 16A, 17 and 18 of Order XXVI, in so far as they are applicable, shall apply to the issue, execution and return of such commission under this rule."

Amendment of Order XX.

13. In the First Schedule, in Order XX, in rule 1, for sub-rule (1), the following sub-rule shall be substituted, namely:—

"(1) The Court, after the case has been heard, shall pronounce judgment in an open Court, either at once, or as soon thereafter as may be practicable and when the judgment is to be pronounced on some future day, the Court shall fix a day for that purpose, of which due notice shall be given to the parties or their pleaders:

Provided that where the judgment is not pronounced at once, every endeavour shall be made by the Court to pronounce the judgment within thirty days from the date on which the hearing of the case was concluded but, where it is not practicable so to do on the ground of the exceptional and extraordinary circumstances of the case, the Court shall fix a future day for the pronouncement of the judgment, and such day shall not ordinarily be a day beyond sixty days from the date on which the hearing of the case was concluded, and due notice of the day so fixed shall be given to the parties or their pleaders."

14. In the First Schedule, in Order XXI,—

Amendment
of Order XXI.

(a) in rule 32, in sub-rule (5), the following *Explanation* shall be inserted, namely:—

*“Explanation.—*For the removal of doubts, it is hereby declared that the expression “the act required to be done” covers prohibitory as well as mandatory injunctions.”;

(b) in rule 92, in sub-rule (2),—

(i) for the words “thirty days”, the words “sixty days” shall be substituted;

(ii) after the first proviso, the following proviso shall be inserted, namely:—

“Provided further that the deposit under this sub-rule may be made within sixty days in all such cases where the period of thirty days, within which the deposit had to be made, has not expired before the commencement of the Code of Civil Procedure (Amendment) Act, 2002.”.

46 of 1999.

15. In the Code of Civil Procedure (Amendment) Act, 1999,—

Amendment
of the Code
of Civil
Procedure
(Amendment)
Act, 1999.

(a) section 30 shall be omitted;

(b) in section 32, in sub-section (2),—

(i) clauses (g) and (h) shall be omitted;

(ii) for clause (j), the following clause shall be substituted, namely:—

“(j) the provisions of rules 1, 2, 6, 7, 9, 9A, 19A, 21, 24 and 25 of Order V of the First Schedule as amended or, as the case may be, substituted or omitted by section 15 of this Act, and by section 6 of the Code of Civil Procedure (Amendment) Act, 2002, shall not apply to in respect of any proceedings pending before the commencement of section 15 of this Act and section 6 of the Code of Civil Procedure (Amendment) Act, 2002;”;

(iii) for clause (k), the following clause shall be substituted, namely:—

“(k) the provisions of rules 9, 11, 14, 15 and 18 of Order VII of the First Schedule as amended or, as the case may be, substituted or omitted by section 17 of this Act and by section 8 of the Code of Civil Procedure (Amendment) Act, 2002, shall not apply to in respect of any proceedings pending before the commencement of section 17 of this Act and section 8 of the Code of Civil Procedure (Amendment) Act, 2002;”;

(iv) for clause (l), the following clause shall be substituted, namely:—

“(l) the provisions of rules 1, 1A, 8A, 9 and 10 of Order VIII of the First Schedule as substituted or, as the case may be, inserted or omitted by section 18 of this Act and by section 9 of the Code of Civil Procedure (Amendment) Act, 2002, shall not apply to a written statement filed and presented before the commencement of section 18 of this Act and section 9 of the Code of Civil Procedure (Amendment) Act, 2002;”;

(v) for clause (q), the following clause shall be substituted, namely:—

“(q) the provisions of rules 4 and 5 of Order XIV of the First Schedule as amended or, as the case may be, substituted by section 24 of this Act and section 11 of the Code of Civil Procedure (Amendment) Act, 2002, shall not affect any order made by the Court adjourning the framing of the issues and amending and striking out issues before the commencement of section 24 of this Act and section 11 of the Code of Civil Procedure (Amendment) Act, 2002;”;

(vi) in clause (s) for the figures “25” at both the places, the figures “26” shall be substituted;

(vii) clause (u) shall be omitted.

Repeal and savings.

16. (1) Any amendment made, or any provision inserted in the principal Act by a State Legislature or High Court before the commencement of this Act shall, except in so far as such amendment or provisions are consistent with the principal Act as amended by this Act, stand repealed.

(2) Notwithstanding that the provisions of this Act have come into force or repeal under sub-section (1) has taken effect, and without prejudice to the generality of the provisions of section 6 of the General Clauses Act, 1897,—

10 of 1897.

(a) the provisions of section 102 of the principal Act as substituted by section 5 of this Act, shall not apply to or affect any appeal which had been admitted before the commencement of section 5; and every such appeal shall be disposed of as if section 5 had not come into force;

(b) the provisions of rules 5, 15, 17 and 18 of Order VI of the First Schedule as omitted or, as the case may be, inserted or substituted by section 16 of the Code of Civil Procedure (Amendment) Act, 1999 and by section 7 of this Act shall not apply to in respect of any pleading filed before the commencement of section 16 of the Code of Civil Procedure (Amendment) Act, 1999 and section 7 of this Act;

46 of 1999.

(c) the provisions of rule 1 of Order XX of the First Schedule as amended by section 13 of this Act shall not apply to a case where the hearing of the case had concluded before the commencement of section 13 of this Act.

Sd/-

Dr. SUBHASH C. JAIN,
Secy. to the Govt. of India.

By order and in the name of the Governor of Gujarat,

V. M. KOTHARE,
Secretary to Government.



सत्यमेव जयते

The Gujarat Government Gazette EXTRAORDINARY

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Separate paging is given to this Part in order that it may be filed as a Separate Compilation.

PART - VI

Acts of Parliament and Ordinances Promulgated by the President

LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT

Notification

Sachivalaya, Gandhinagar, 21st June, 2002.

No. RPB/23/2002/202/E. The following ordinance, promulgated by the President and published in the Gazette of India, Extra-ordinary, Part II, Section I, dated the 21st June, 2002 is republished for general information :-

GOVERNMENT OF INDIA

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS

(Legislative Department)

New Delhi, the 21st June, 2002/Jyastha 31, 1924 (Saka)

THE SECURITISATION AND RECONSTRUCTION OF FINANCIAL
ASSETS AND ENFORCEMENT OF SECURITY INTEREST ORDINANCE,
2002

No. 2 of 2002

Promulgated by the President in the Fifty-third Year of the Republic of India.

An Ordinance to regulate security interest and for matters connected therewith or incidental thereto.

WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action.

Now THEREFORE, in exercise of the powers conferred by the clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance :-

CHAPTER 1

PRELIMINARY

1. (1) This Ordinance may be called the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Ordinance, 2002.

(2) It extends to the whole of India.

(3) It shall come into force at once.

Short title,
extent and
commence-
ment.

Definitions.

2. (1) In this Ordinance, unless the context otherwise requires,—

(a) "Appellate Tribunal" means a Debts Recovery Appellate Tribunal established under sub-section (1) of section 8 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993;

51 of 1993.

(b) "asset reconstruction" means acquisition by any securitisation company or reconstruction company of any right or interest of any bank or financial institution in any financial assistance for the purpose of realisation of such financial assistance;

(c) "bank" means—

(i) a banking company; or

(ii) a corresponding new bank; or

(iii) the State Bank of India; or

(iv) a subsidiary bank; or

(v) such other bank which the Central Government may, by notification, specify for the purposes of this Ordinance;

(d) "banking company" shall have the meaning assigned to it in clause (c) of section 5 of the Banking Regulation Act, 1949;

10 of 1949.

(e) "Board" means the Securities and Exchange Board of India established under section 3 of the Securities and Exchange Board of India Act, 1992;

15 of 1992.

(f) "borrower" means any person who has been granted financial assistance by any bank or financial institution or who has given any guarantee or created any mortgage or pledge as security for the financial assistance granted by any bank or financial institution and includes a person who becomes borrower of a securitisation company or reconstruction company consequent upon acquisition by it of any rights or interest of any bank or financial institution in relation to such financial assistance;

(g) "Central Registry" means the registry set up or cause to be set up under sub-section (1) of section 20;

(h) "corresponding new bank" shall have the meaning assigned to it in clause (da) of section 5 of the Banking Regulation Act, 1949;

10 of 1949.

(i) "Debts Recovery Tribunal" means the Tribunal established under sub-section (1) of section 3 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993;

51 of 1993.

(j) "default" means non-payment of any principal debt or interest thereon or any other amount payable by a borrower to any secured creditor consequent upon which the account of such borrower is classified as non-performing asset in the books of account of the secured creditor in accordance with the directions or guidelines issued by the Reserve Bank;

(k) "financial assistance" means any loan or advance granted or any debentures or bonds subscribed or any guarantees given or letters of credit established or any other credit facility extended by any bank or financial institution;

(l) "financial asset" means debt or receivables and includes—

(i) a claim to any debt or receivables or part thereof, whether secured or unsecured; or

(ii) any debt or receivables secured by, mortgage of, or charge on, immovable property; or

(iii) a mortgage, charge, hypothecation or pledge of movable property; or

(iv) any right or interest in the security, whether full or part underlying such debt or receivables; or

(v) any beneficial interest in property, whether movable or immovable, or in such debt, receivables, whether such interest is existing, future, accruing, conditional or contingent; or

(vi) any financial assistance;

(m) "financial institution" means—

(i) a public financial institution within the meaning of section 4A of the Companies Act, 1956;

(ii) any institution specified by the Central Government under sub-clause (ii) of clause (h) of section 2 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993;

(iii) International Finance Corporation established under the International Finance Corporation (Status, Immunities and Privileges) Act, 1958;

(iv) any other institution or non-banking financial company as defined in clause (j) of section 45-I of the Reserve Bank of India Act, 1934, which the Central Government may, by notification, specify as financial institution for the purposes of this Ordinance;

(n) "hypothecation" means a charge in or upon any movable property, existing or future, created by a borrower in favour of a secured creditor without delivery of possession of the movable property to such creditor, as a security for financial assistance and includes floating charge and crystallization of such charge into fixed charge on movable property;

(o) "non-performing asset" means an asset or account of a borrower, which has been classified by a bank or financial institution as sub-standard, doubtful or loss asset, in accordance with the directions or guidelines relating to asset classifications issued by the Reserve Bank;

(p) "notification" means a notification published in the Official Gazette;

(q) "obligor" means a person liable to the originator, whether under a contract or otherwise, to pay a financial asset or to discharge any obligation in respect of a financial asset, whether existing, future, conditional or contingent and includes the borrower;

(r) "originator" means the owner of a financial asset which is acquired by a securitisation company or reconstruction company for the purpose of securitisation or asset reconstruction;

(s) "prescribed" means prescribed by rules made under this Ordinance;

(t) "property" means—

(i) immovable property;

(ii) movable property;

(iii) any debt or any right to receive payment of money, whether secured or unsecured;

(iv) receivables, whether existing or future;

(v) intangible assets, being know-how, patent, copyright, trade mark, licence, franchise or any other business or commercial right of similar nature;

(u) "qualified institutional buyer" means a financial institution, insurance company, bank, state financial corporation, state industrial development corporation, trustee or any asset management company making investment on behalf of mutual fund or provident fund or gratuity fund or pension fund or a foreign institutional investor registered under the Securities and Exchange Board of India Act, 1992 or regulations made thereunder, or any other body corporate as may be specified by the Board; 15 of 1992.

(v) "reconstruction company" means a company formed and registered under the Companies Act, 1956 for the purpose of asset reconstruction; 1 of 1956.

(w) "Registrar of Companies" means the Registrar defined in clause (40) of section 2 of the Companies Act, 1956; 1 of 1956.

(x) "Reserve Bank" means the Reserve Bank of India constituted under section 3 of the Reserve Bank of India Act, 1934; 2 of 1934.

(y) "scheme" means a scheme inviting subscription to security receipts proposed to be issued by a securitisation company or reconstruction company under that scheme;

(z) "securitisation" means acquisition of financial assets by any securitisation company or reconstruction company from any originator, whether by raising of funds by such securitisation company or reconstruction company from qualified institutional buyers by issue of security receipts representing undivided interest in such financial assets or otherwise;

(za) "securitisation company" means any company formed and registered under the Companies Act, 1956 for the purpose of securitisation; 1 of 1956.

(zb) "security agreement" means an agreement, instrument or any other document or arrangement under which security interest is created in favour of the secured creditor including the creation of mortgage by deposit of title deeds with the secured creditor;

(zc) "secured asset" means the property on which security interest is created;

(zd) "secured creditor" means any bank or financial institution or any consortium or group of banks or financial institutions and includes—

(i) debenture trustee appointed by any bank or financial institution; or

(ii) securitisation company or reconstruction company; or

(iii) any other trustee holding securities on behalf of a bank or financial institution, in whose favour security interest is created for due repayment by any borrower of any financial assistance;

(ze) "secured debt" means a debt which is secured by any security interest;

(zf) "security interest" means right, title and interest of any kind whatsoever upon property, created in favour of any secured creditor and includes any mortgage, charge, hypothecation, assignment other than those specified in section 31;

(zg) "security receipt" means a receipt or other security, issued by a securitisation company or reconstruction company to any qualified institutional buyer pursuant to a scheme, evidencing the purchase or acquisition by the holder thereof, of an undivided right, title or interest in the financial asset involved in securitisation;

(zh) "sponsor" means any person holding not less than ten per cent. of the paid-up equity capital of a securitisation company or reconstruction company;

(zi) "State Bank of India" means the State Bank of India constituted under section 3 of the State Bank of India Act, 1955; 23 of 1955.

(zj) "subsidiary bank" shall have the meaning assigned to it in clause (k) of section 2 of the State Bank of India (Subsidiary Banks) Act, 1959. 38 of 1959.

9 of 18/2.
4 of 1882.
1 of 1956.
15 of 1992.

(2) Words and expressions used and not defined in this Ordinance but defined in the Indian Contract Act, 1872 or the Transfer of Property Act, 1882 or the Companies Act, 1956 or the Securities and Exchange Board of India Act, 1992 shall have the same meanings respectively assigned to them in those Acts.

CHAPTER II

REGULATION OF SECURITISATION AND RECONSTRUCTION OF FINANCIAL ASSETS OF BANKS AND FINANCIAL INSTITUTIONS

3. (1) No securitisation company or reconstruction company shall commence or carry on the business of securitisation or asset reconstruction without—

Registration of securitisation companies or reconstruction companies.

(a) obtaining a certificate of registration granted under this section; and

(b) having the owned fund of not less than two crore rupees or such other amount not exceeding fifteen per cent. of total financial assets acquired or to be acquired by the securitisation company or reconstruction company, as the Reserve Bank may, by notification, specify:

Provided that the Reserve Bank may, by notification, specify different amounts of owned fund for different class or classes of securitisation companies or reconstruction companies:

Provided further that a securitisation company or reconstruction company, existing on the commencement of this Ordinance, shall make an application for registration to the Reserve Bank before the expiry of six months from such commencement and notwithstanding anything contained in this sub-section may continue to carry on the business of securitisation or asset reconstruction until a certificate of registration is granted to it or, as the case may be, rejection of application for registration is communicated to it.

(2) Every securitisation company or reconstruction company shall make an application for registration to the Reserve Bank in such form and manner as it may specify.

(3) The Reserve Bank may, for the purpose of considering the application for registration of a securitisation company or reconstruction company to carry on the business of securitisation or asset reconstruction, as the case may be, require to be satisfied, by an inspection of records or books of such securitisation company or reconstruction company, or otherwise, that the following conditions are fulfilled, namely:—

(a) that the securitisation company or reconstruction company has not incurred losses in any of the three preceding financial years;

(b) that such securitisation company or reconstruction company has made adequate arrangements for realisation of the financial assets acquired for the purpose of securitisation or asset reconstruction and shall be able to pay periodical returns and redeem on respective due dates on the investments made in the company by the qualified institutional buyers or other persons;

(c) that the directors of securitisation company or reconstruction company have adequate professional experience in matters related to finance, securitisation and reconstruction;

(d) that the board of directors of such securitisation company or reconstruction company does not consist of more than half of its total number of directors who are either nominees of any sponsor or associated in any manner with the sponsor or any of its subsidiaries;

(e) that any of its directors has not been convicted of any offence involving moral turpitude;

(f) that a sponsor, is not a holding company of the securitisation company or reconstruction company, as the case may be, or, does not otherwise hold any controlling interest in such securitisation company or reconstruction company;

(g) that securitisation company or reconstruction company has complied with or is in a position to comply with prudential norms specified by the Reserve Bank.

(4) The Reserve Bank may, after being satisfied that the conditions specified in sub-section (3) are fulfilled, grant a certificate of registration to the securitisation company or the reconstruction company to carry on or commence business of securitisation or asset reconstruction, subject to such conditions, which it may consider, fit to impose.

(5) The Reserve Bank may reject the application made under sub-section (2) if it is satisfied that the conditions specified in sub-section (3) are not fulfilled:

Provided that before rejecting the application, the applicant shall be given a reasonable opportunity of being heard.

(6) Every securitisation company or reconstruction company shall obtain prior approval of the Reserve Bank for any substantial change in its management or change of location of its registered office or change in its name:

Provided that the decision of the Reserve Bank, whether the change in management of a securitisation company or a reconstruction company is a substantial change in its management or not, shall be final.

Explanation.—For the purposes of this section, the expression "substantial change in management" means the change in the management by way of transfer of shares or amalgamation or transfer of the business of the company.

Cancellation
of certificate
of
registration.

4. (1) The Reserve Bank may cancel a certificate of registration granted to a securitisation company or a reconstruction company, if such company—

(a) ceases to carry on the business of securitisation or asset reconstruction; or

(b) ceases to receive or hold any investment from a qualified institutional buyer; or

(c) has failed to comply with any conditions subject to which the certificate of registration has been granted to it; or

(d) at any time fails to fulfil any of the conditions referred to in clauses (a) to (g) of sub-section (3) of section 3; or

(e) fails to—

(i) comply with any direction issued by the Reserve Bank under the provisions of this Ordinance; or

(ii) maintain accounts in accordance with the requirements of any law or any direction or order issued by the Reserve Bank under the provisions of this Ordinance; or

(iii) submit or offer for inspection its books of account or other relevant documents when so demanded by the Reserve Bank; or

(iv) obtain prior approval of the Reserve Bank required under sub-section (6) of section 3:

Provided that before cancelling a certificate of registration on the ground that the securitisation company or reconstruction company has failed to comply with the provisions of clause (c) or has failed to fulfil any of the conditions referred to in clause (d) or sub-clause (iv) of clause (e), the Reserve Bank, unless it is of the opinion that the delay in cancelling the certificate of registration granted under sub-section (4) of section 3 shall be prejudicial to the public interest or the interests of the investors or the securitisation company or the reconstruction company, shall give an opportunity to such company on such terms as the Reserve Bank may specify for taking necessary steps to comply with such provisions or fulfilment of such conditions.

(2) A securitisation company or reconstruction company aggrieved by the order of rejection of application for registration or cancellation of certificate of registration may prefer an appeal, within a period of thirty days from the date on which such order of rejection or cancellation is communicated to it, to the Central Government:

Provided that before rejecting an appeal such company shall be given a reasonable opportunity of being heard.

(3) A securitisation company or reconstruction company, which is holding investments of qualified institutional buyers and whose application for grant of certificate of registration has been rejected or certificate of registration has been cancelled shall, notwithstanding such rejection or cancellation of certificate of registration, be deemed to be a securitisation company or reconstruction company until it repays the entire investments held by it (together with interest, if any) within such period as the Reserve Bank may direct.

5. (1) Notwithstanding anything contained in any agreement or any other law for the time being in force, any securitisation company or reconstruction company may acquire financial assets of any bank or financial institution—

Acquisition
of rights or
interest in
financial
assets.

(a) by issuing a debenture or bond or any other security in the nature of the debenture, for consideration agreed upon between such company and the bank or financial institution, incorporating therein such terms and conditions as may be agreed upon between them; or

(b) by entering into an agreement with such bank or financial institution for the transfer of such financial assets to such company on such terms and conditions as may be agreed upon between them.

(2) If the bank or financial institution is a lender in relation to any financial assets acquired under sub-section (1) by the securitisation company or the reconstruction company, such securitisation company or reconstruction company shall, on such acquisition, be deemed to be the lender and all the rights of such bank or financial institution shall vest in such company in relation to such financial assets.

(3) Unless otherwise expressly provided by this Ordinance, all contracts, deeds, bonds, agreements, powers-of-attorney, grants of legal representation, permissions, approvals, consents or no-objections under any law or otherwise and other instruments of whatever nature which relate to the said financial asset and which are subsisting or having effect immediately before the acquisition of financial asset under sub-section (1) and to which the concerned bank or financial institution is a party or which are in favour of such bank or financial institution shall, after the acquisition of the financial assets, be of as full force and effect against or in favour of the securitisation company or reconstruction company, as the case may be, and may be enforced or acted upon as fully and effectually as if, in the place of the said bank or financial institution, securitisation company or reconstruction company, as the case may be, had been a party thereto or as if they had been issued in favour of securitisation company or reconstruction company, as the case may be.

(4) If, on the date of acquisition of financial asset under sub-section (1), any suit, appeal or other proceeding of whatever nature relating to the said financial asset is pending by or against the bank or financial institution, save as provided in the third proviso to sub-section (1) of section 15 of the Sick Industrial Companies (Special Provisions) Act, 1985 the same shall not abate, or be discontinued or be, in any way, prejudicially affected by reason of the acquisition of financial asset by the securitisation company or reconstruction company, as the case may be, but the suit, appeal or other proceeding may be continued, prosecuted and enforced by or against the securitisation company or reconstruction company, as the case may be.

Notice to
obligor and
discharge of
obligation of
such obligor.

6. (1) The bank or financial institution may, if it considers appropriate, give a notice of acquisition of financial assets by any securitisation company or reconstruction company, by the concerned obligor and any other concerned person and to the concerned registering authority in whose jurisdiction the mortgage, charge, hypothecation, assignment or other interest created on the financial assets had been registered.

(2) Where a notice of acquisition of financial asset under sub-section (1) is given by a bank or financial institution, the obligor, on receipt of such notice, shall make payment to the concerned securitisation company or reconstruction company, as the case may be, and payment made to such company in discharge of any of the obligations in relation to the financial asset specified in the notice shall be a full discharge to the obligor making the payment from all liability in respect of such payment.

(3) Where no notice of acquisition of financial asset under sub-section (1) is given by any bank or financial institution, any money or other properties subsequently received by the bank or financial institution, shall constitute monies or properties held in trust for the benefit of and on behalf of the securitisation company or reconstruction company, as the case may be, and such bank or financial institution shall hold such payment or property which shall forthwith be made over or delivered to such securitisation company or reconstruction company, as the case may be, or its agent duly authorised in this behalf.

Issue of
security by
raising of
receipts or
funds by
securitisation
company or
reconstruction
company.

7. (1) Without prejudice to the provisions contained in the Companies Act, 1956, Securities Contracts (Regulation) Act, 1956 and the Securities and Exchange Board of India Act, 1992, any securitisation company or reconstruction company, may, after acquisition of any financial asset under sub-section (1) of section 5, offer security receipts to qualified institutional buyers (other than by offer to public) for subscription in accordance with the provisions of those Acts.

1 of 1956,
42 of 1956
15 of 1992.

(2) A securitisation company or reconstruction company may raise funds from the qualified institutional buyers by formulating schemes for acquiring financial assets and shall keep and maintain separate and distinct accounts in respect of each such scheme for every financial asset acquired out of investments made by a qualified institutional buyer and ensure that realisations of such financial asset is held and applied towards redemption of investments and payment of returns assured on such investments under the relevant scheme.

(3) In the event of non-realisation under sub-section (2) of financial assets, the qualified institutional buyers of a securitisation company or reconstruction company, holding security receipts of not less than seventy-five per cent. of the total value of the security receipts issued by such company, shall be entitled to call a meeting of all the qualified institutional buyers and every resolution passed in such meeting shall be binding on the company.

(4) The qualified institutional buyers shall, at a meeting called under sub-section (3), follow the same procedure, as nearly as possible as is followed at meetings of the board of directors of the securitisation company or reconstruction company, as the case may be.

Exemption
from
registration of
security
receipt.

8. Notwithstanding anything contained in sub-section (1) of section 17 of the Registration Act, 1908,—

16 of 1908.

(a) any security receipt issued by the securitisation company or reconstruction company, as the case may be, under sub-section (1) of section 7, and not creating, declaring, assigning, limiting or extinguishing any right, title or interest, to or in immovable property except in so far as it entitles the holder of the security receipt to an undivided interest afforded by a registered instrument; or

(b) any transfer of security receipts,

shall not require compulsory registration.

Measures for
assets
reconstruction.

9. Without prejudice to the provisions contained in any other law for the time being in force, a securitisation company or reconstruction company may, for the purposes of asset reconstruction, having regard to the guidelines framed by the Reserve Bank in this behalf, provide for any one or more of the following measures, namely:—

- (a) the proper management of the business of the borrower, by change in, or take over of, the management of the business of the borrower;
- (b) the sale or lease of a part or whole of the business of the borrower;
- (c) rescheduling of payment of debts payable by the borrower;
- (d) enforcement of security interest in accordance with the provisions of this Ordinance;
- (e) settlement of dues payable by the borrower;
- (f) taking possession of secured assets in accordance with the provisions of this Ordinance.

10. (1) Any securitisation company or reconstruction company registered under section 3 may—

- (a) act as an agent for any bank or financial institution for the purpose of recovering their dues from the borrower on payment of such fees or charges as may be mutually agreed upon between the parties;
- (b) act as a manager referred to in clause (c) of sub-section (4) of section 13 on such fee as may be mutually agreed upon between the parties;
- (c) act as receiver if appointed by any court or tribunal:

Other functions of securitisation company or reconstruction company.

Provided that no securitisation company or reconstruction company shall act as a manager if acting as such gives rise to any pecuniary liability.

(2) Save as otherwise provided in sub-section (1), no securitisation company or reconstruction company which has been granted a certificate of registration under sub-section (4) of section 3, shall commence or carry on, without prior approval of the Reserve Bank, any business other than that of securitisation or asset reconstruction:

Provided that a securitisation company or reconstruction company which is carrying on, on or before the commencement of this Ordinance, any business other than the business of securitisation or asset reconstruction or business referred to in sub-section (1), shall cease to carry on any such business within one year from the date of commencement of this Ordinance.

Explanation— For the purposes of this section, “securitisation company” or “reconstruction company” does not include its subsidiary.

11. Where any dispute relating to securitisation or reconstruction or non-payment of any amount due including interest arises amongst any of the parties, namely, the bank, or financial institution, a securitisation company or reconstruction company or qualified institutional buyers, such dispute shall be settled by conciliation or arbitration as provided in the Arbitration and Conciliation Act, 1996, as if the parties to the dispute have consented in writing for determination of such dispute by conciliation or arbitration and the provisions of that Act shall apply accordingly.

Resolution of disputes.

12. (1) If the Reserve Bank is satisfied that in the public interest or to regulate financial system of the country to its advantage or to prevent the affairs of any securitisation company or reconstruction company from being conducted in a manner detrimental to the interest of investors or in any manner prejudicial to the interest of such securitisation company or reconstruction company, it is necessary or expedient so to do, it may determine the policy and give directions to all or any securitisation company or reconstruction company in matters relating to income recognition, accounting standards, making provisions for bad and doubtful debts, capital adequacy based on risk weights for assets and also relating to deployment of funds by the securitisation company or reconstruction company, as the case may be, and such company shall be bound to follow the policy so determined and the directions so issued.

Power of Reserve Bank to determine policy and issue directions.

(2) Without prejudice to the generality of the power vested under sub-section (1) the Reserve Bank may give directions to any securitisation company or reconstruction company generally or to a class of securitisation companies or reconstruction companies or to any securitisation company or reconstruction company in particular as to—

(a) the type of financial asset of a bank or financial institution which can be acquired and procedure for acquisition of such assets and valuation thereof;

(b) the aggregate value of financial assets which may be acquired by any securitisation company or reconstruction company.

CHAPTER III

ENFORCEMENT OF SECURITY INTEREST

Enforcement
of security in-
terest.

13. (1) Notwithstanding anything contained in section 69 or section 69A of the Transfer of Property Act, 1882, any security interest created in favour of any secured creditor may be enforced, without the intervention of court or tribunal, by such creditor in accordance with the provisions of this Ordinance. 4 of 1882.

(2) Where any borrower, who is under a liability to a secured creditor under a security agreement, makes any default in repayment of secured debt or any instalment thereof, and his account in respect of such debt is classified by the secured creditor as non-performing asset, then, the secured creditor may require the borrower by notice in writing to discharge in full his liabilities to the secured creditor within sixty days from the date of notice failing which the secured creditor shall be entitled to exercise all or any of the rights under sub-section (4).

(3) The notice referred to in sub-section (2) shall give details of the amount payable by the borrower and the secured assets intended to be enforced by the secured creditor in the event of non-payment of secured debts by the borrower.

(4) In case the borrower fails to discharge his liability in full within the period specified in sub-section (2), the secured creditor may take recourse to one or more of the following measures to recover his secured debt, namely:—

(a) take possession of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset;

(b) take over the management of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale and realise the secured asset;

(c) appoint any person (hereafter referred to as the manager), to manage the secured assets the possession of which has been taken over by the secured creditor;

(d) require at any time by notice in writing, any person who has acquired any of the secured assets from the borrower and from whom any money is due or may become due to the borrower, to pay the secured creditor, so much of the money as is sufficient to pay the secured debt.

(5) Any payment made by any person referred to in clause (d) of sub-section (4) to the secured creditor shall give such person a valid discharge as if he has made payment to the borrower.

(6) Any transfer of secured asset after taking possession thereof or take over of management under sub-section (4), by the secured creditor or by the manager on behalf of the secured creditors shall vest in the transferee all rights in, or in relation to, the secured asset transferred as if the transfer had been made by the owner of such secured asset.

(7) Where any action has been taken against a borrower under the provisions of sub-section (4), all costs, charges and expenses which, in the opinion of the secured creditor, have been properly incurred by him or any expenses incidental thereto, shall be recoverable from the borrower and the money which is received by the secured creditor shall, in the

absence of any contract to the contrary, be held by him in trust, to be applied, firstly, in payment of such costs, charges and expenses and secondly, in discharge of the dues of the secured creditor and the residue of the money so received shall be paid to the person entitled thereto in accordance with his rights and interests.

(8) If the dues of the secured creditor together with all costs, charges and expenses incurred by him are tendered to the secured creditor at any time before the date fixed for sale or transfer, the secured asset shall not be sold or transferred by the secured creditor, and no further step shall be taken by him for transfer or sale of that secured asset.

(9) In the case of financing of a financial asset by more than one secured creditors or joint financing of a financial asset by secured creditors, no secured creditor shall be entitled to exercise any or all of the rights conferred on him under or pursuant to sub-section (4) unless exercise of such right is agreed upon by the secured creditors representing not less than three-fourth in value of the amount outstanding as on a record date and such action shall be binding on all the secured creditors:

Provided that in the case of a company in liquidation, the amount realised from the sale of secured assets shall be distributed in accordance with the provisions of section 529A of the Companies Act, 1956:

1 of 1956.

Provided further that in the case of a company being wound up on or after the commencement of this Ordinance, the secured creditor of such company, who opts to realise his security instead of relinquishing his security and proving his debt under proviso to sub-section (1) of section 529 of the Companies Act, 1956, may retain the sale proceeds of his secured assets after depositing the workmen's dues with the liquidator in accordance with the provisions of section 529A of that Act:

1 of 1956.

Provided also that the liquidator referred to in the second proviso shall intimate the secured creditors the workmen's dues in accordance with the provisions of section 529A of the Companies Act, 1956 and in case such workmen's dues cannot be ascertained, the liquidator shall intimate the estimated amount of workmen's dues under that section to the secured creditors and in such case the secured creditor may retain the sale proceeds of the secured assets after depositing the amount of such estimated dues with the liquidator:

1 of 1956.

Provided also that in case the secured creditor deposits the estimated amount of workmen's dues, such creditor shall be liable to pay the balance of the workmen's dues or entitled to receive the excess amount, if any, deposited by the secured creditor with the liquidator:

Provided also that the secured creditor shall furnish an undertaking to the liquidator to pay the balance of the workmen's dues, if any.

Explanation.—For the purposes of this sub-section,—

(a) "record date" means the date agreed upon by the secured creditors representing not less than three-fourth in value of the amount outstanding on such date;

(b) "amount outstanding" shall include principal, interest and any other dues payable by the borrower to the secured creditor in respect of secured asset as per the books of account of the secured creditor.

(10) Where dues of the secured creditor are not fully satisfied with the sale proceeds of the secured assets, the secured creditor may file an application in the form and manner as may be prescribed to the Debts Recovery Tribunal having jurisdiction or a competent court, as the case may be, for recovery of the balance amount from the borrower.

(11) Without prejudice to the rights conferred on the secured creditor under or by this section, secured creditor shall be entitled to proceed against the guarantors or sell the pledged assets without first taking any of the measures specified in clauses (a) to (d) of sub-section (4) in relation to the secured assets under this Ordinance.

(12) The rights of a secured creditor under this Ordinance may be exercised by one or more of his officers authorised in this behalf in such manner as may be prescribed.

(13) No borrower shall, after receipt of notice referred to in sub-section (2), transfer by way of sale, lease or otherwise (other than in the ordinary course of his business) any of his secured assets referred to in the notice, without prior written consent of the secured creditor.

Chief Metro-
politan Magis-
trate or District
Magistrate to
assist secured
creditor in tak-
ing possession.

14. (1) Where the possession of any secured assets is required to be taken by the secured creditor or if any of the secured assets is required to be sold or transferred by the secured creditor under the provisions of this Ordinance, the secured creditor may, for the purpose of taking possession or control of any such secured assets, request, in writing, the Chief Metropolitan Magistrate or the District Magistrate within whose jurisdiction any such secured assets or other documents relating thereto may be situated or found, to take possession thereof, and the Chief Metropolitan Magistrate or as the case may be, the District Magistrate shall, on such request being made to him—

(a) take possession of such assets and documents relating thereto; and

(b) forward such assets and documents to the secured creditor.

(2) For the purpose of securing compliance with the provisions of sub-section (1), the Chief Metropolitan Magistrate or the District Magistrate may take or cause to be taken such steps and use, or cause to be used, such force, as may, in his opinion, be necessary.

(3) No act of the Chief Metropolitan Magistrate or the District Magistrate done in pursuance of this section shall be called in question in any court or before any authority.

Manner and
effect of
takeover of
management.

15. (1) When the management of business of a borrower is taken over by the secured creditor, the secured creditor may, by publishing a notice in a newspaper published in English language and in a newspaper published in an Indian language in circulation in the place where the principal office of the borrower is situated, appoint as many persons as it thinks fit—

(a) in a case in which the borrower is a company as defined in the Companies Act, 1956, to be the directors of that borrower in accordance with the provisions of that Act; or

(b) in any other case, to be the administrator of the business of the borrower.

(2) On publication of a notice under sub-section (1),—

(a) in any case where the borrower is a company as defined in the Companies Act, 1956, all persons holding office as directors of the company and in any other case, all persons holding any office having power of superintendence, direction and control of the business of the borrower immediately before the publication of the notice under sub-section (1), shall be deemed to have vacated their offices as such;

(b) any contract of management between the borrower and any director or manager thereof holding office as such immediately before publication of the notice under sub-section (1), shall be deemed to be terminated;

(c) the directors or the administrators appointed under this section shall take such steps as may be necessary to take into their custody or under their control all the property, effects and actionable claims to which the business of the borrower is, or appears to be, entitled and all the property and effects of the business of the borrower shall be deemed to be in the custody of the directors or administrators, as the case may be, as from the date of the publication of the notice;

(d) the directors appointed under this section shall, for all purposes, be the directors of the company of the borrower and such directors or as the case may be, the administrators appointed under this section, shall alone be entitled to exercise all the

powers of the directors or as the case may be, of the persons exercising powers of superintendence, direction and control, of the business of the borrower whether such powers are derived from the memorandum or articles of association of the company of the borrower or from any other source whatsoever.

1 of 1956.

(3) Where the management of the business of a borrower, being a company as defined in the Companies Act, 1956, is taken over by the secured creditor, then, notwithstanding anything contained in the said Act or in the memorandum or articles of association of such borrower,—

(a) it shall not be lawful for the shareholders of such company or any other person to nominate or appoint any person to be a director of the company;

(b) no resolution passed at any meeting of the shareholders of such company shall be given effect to unless approved by the secured creditor;

(c) no proceeding for the winding up of such company or for the appointment of a receiver in respect thereof shall lie in any court, except with the consent of the secured creditor.

(4) Where the management of the business of a borrower had been taken over by the secured creditor, the secured creditor shall, on realisation of his debt in full, restore the management of the business of the borrower to him.

16. (1) Notwithstanding anything to the contrary contained in any contract or in any other law for the time being in force, no managing director or any other director or a manager or any person in charge of management of the business of the borrower shall be entitled to any compensation for the loss of office or for the premature termination under this Ordinance of any contract of management entered into by him with the borrower.

No compensation to directors for loss of office.

(2) Nothing contained in sub-section (1) shall affect the right of any such managing director or any other director or manager of any such person in charge of management to recover from the business of the borrower, moneys recoverable otherwise than by way of such compensation.

17. (1) Any person (including borrower) aggrieved by any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor or his authorised officer under this Chapter, may prefer an appeal to the Debts Recovery Tribunal having jurisdiction in the matter within forty-five days from the date on which such measures had been taken.

Right to appeal.

(2) Where an appeal is preferred by a borrower, such appeal shall not be entertained by the Debts Recovery Tribunal unless the borrower has deposited with the Debts Recovery Tribunal seventy-five per cent. of the amount claimed in the notice referred to in sub-section (2) of section 13:

Provided that the Debts Recovery Tribunal may, for reasons to be recorded in writing, waive or reduce the amount to be deposited under this section.

(3) Save as otherwise provided in this Ordinance, the Debts Recovery Tribunal shall, as far as may be, dispose of the appeal in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and rules made thereunder.

51 of 1993.

18. (1) Any person aggrieved by any order made by the Debts Recovery Tribunal under section 17 may prefer an appeal to an Appellate Tribunal within thirty days from the date of receipt of the order of Debts Recovery Tribunal.

Appeal to Appellate Tribunal.

(2) Save as otherwise provided in this Ordinance, the Appellate Tribunal shall, as far as may be, dispose of the appeal in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and rules made thereunder.

51 of 1993.

19. If the Debts Recovery Tribunal or the Appellate Tribunal, as the case may be, on an appeal filed under section 17 or section 18, holds the possession of secured assets by the secured creditor as wrongful and directs the secured creditor to return such secured assets to

Right of borrower to receive compensation and costs in certain cases.

the concerned borrower, such borrower shall be entitled to payment of such compensation and costs as may be determined by such Tribunal or Appellate Tribunal.

CHAPTER IV

CENTRAL REGISTRY

Central Registry.

20. (1) The Central Government may, by notification, set-up or cause to be set-up from such date as it may specify in such notification, a registry to be known as the Central Registry with its own seal for the purposes of registration of transaction of securitisation and reconstruction of financial assets and creation of security interest under this Ordinance.

(2) The head office of the Central Registry shall be at such place as the Central Government may specify and for the purpose of facilitating registration of transactions referred to in sub-section (1), there may be established at such other places as the Central Government may think fit, branch offices of the Central Registry.

(3) The Central Government may, by notification, define the territorial limits within which an office of the Central Registry may exercise its functions.

(4) The provisions of this Ordinance pertaining to the Central Registry shall be in addition to and not in derogation of any of the provisions contained in the Registration Act, 1908, the Companies Act, 1956, the Merchant Shipping Act, 1958, the Patents Act, 1970, the Motor Vehicles Act, 1988 and the Designs Act, 2000 or any other law requiring registration of charges and shall not affect the priority of charges or validity thereof under those Acts or laws.

16 of 1908.
1 of 1956.
44 of 1958.
39 of 1970.
59 of 1988.
16 of 2000.

Central Registrar.

21. (1) The Central Government may, by notification, appoint a person for the purpose of registration of transactions relating to securitisation, reconstruction of financial assets and security interest created over properties, to be known as the Central Registrar.

(2) The Central Government may appoint such other officers with such designations as it thinks fit for the purpose of discharging, under the superintendence and direction of the Central Registrar, such functions of the Central Registrar under this Ordinance as he may, from time to time, authorise them to discharge.

Register of securitisation, reconstruction and security interest, transactions.

22. (1) For the purposes of this Ordinance, a record called the Central Register shall be kept at the head office of the Central Registry for entering the particulars of the transactions relating to—

- (a) securitisation of financial assets;
- (b) reconstruction of financial assets; and
- (c) creation of security interest.

(2) Notwithstanding anything contained in sub-section (1), it shall be lawful for the Central Registrar to keep the records wholly or partly in computer floppies, diskettes or in any other electronic form subject to such safeguards as may be prescribed.

(3) Where such register is maintained wholly or partly on computer under sub-section (2), any reference in this Ordinance to entry in the Central Register shall be construed as a reference to any entry as maintained on computer or in any other electronic form.

(4) The register shall be kept under the control and management of the Central Registrar.

Filing of transactions of securitisation, reconstruction and creation of security interest.

23. The particulars of every transaction of securitisation, asset reconstruction or creation of security interest shall be filed, with the Central Registrar in the manner and on payment of such fee as may be prescribed, within thirty days after the date of such transaction or creation of security, by the securitisation company or reconstruction company or the secured creditor, as the case may be:

Provided that the Central Registrar may allow the filing of the particulars of such transaction or creation of security within thirty days next following the expiry of the said period of thirty days on payment of such additional fees not exceeding ten times the amount of such fee.

24. Whenever the terms or conditions, or the extent or operation of any security interest registered under this Chapter are or is modified, it shall be the duty of the securitisation company or the reconstruction company or the secured creditors, as the case may be, to send to the Central Registrar, the particulars of such modification, and the provisions of this Chapter as to registration of a security interest shall apply to such modification of such security interest.

Modification of security interest registered under this Ordinance.

25. (1) The securitisation company or reconstruction company or the secured creditors as the case may be, shall give intimation to the Central Registrar of the payment or satisfaction in full, of any security interest relating to the securitisation company or the reconstruction company or the secured creditors and requiring registration under this Chapter, within thirty days from the date of such payment or satisfaction.

Securitisation company or reconstruction company or secured creditors to report satisfaction of security interest.

(2) The Central Registrar shall, on receipt of such intimation, cause a notice to be sent to the securitisation company or reconstruction company or the secured creditors calling upon it to show cause within a time not exceeding fourteen days specified in such notice, as to why payment or satisfaction should not be recorded as intimated to the Central Registrar.

(3) If no cause is shown, the Central Registrar shall order that a memorandum of satisfaction shall be entered in the Central Register.

(4) If cause is shown, the Central Registrar shall record a note to that effect in the Central Register, and shall inform the borrower that he has done so.

26. (1) The particulars of securitisation or reconstruction or security interest entered in the Central Register of such transactions kept under section 22 shall be open during the business hours for inspection by any person on payment of such fees as may be prescribed.

Right to inspect particulars of securitisation, reconstruction and security interest transactions.

(2) The Central Register referred to in sub-section (1) maintained in electronic form, shall also be open during the business hours for the inspection of any person through electronic media on payment of such fees as may be prescribed.

CHAPTER V

OFFENCES AND PENALTIES

27. If a default is made—

Penalties.

(a) in filing under section 23, the particulars of every transaction of any securitisation or asset reconstruction or security interest created by a securitisation company or reconstruction company or secured creditors; or

(b) in sending under section 24, the particulars of the modification referred to in that section; or

(c) in giving intimation under section 25,

every company and every officer of the company or the secured creditor and every officer of the secured creditor who is in default shall be punishable with fine which may extend to five thousand rupees for every day during which the default continues.

28. If any securitisation company or reconstruction company fails to comply with any direction issued by the Reserve Bank under section 12, such company and every officer of the company who is in default, shall be punishable with fine which may extend to five lakh rupees and in the case of a continuing offence, with an additional fine which may extend to ten thousand rupees for every day during which the default continues.

Penalties for non-compliance of direction of Reserve Bank.

Offences.

29. If any person contravenes or attempts to contravene or abets the contravention of the provisions of this Ordinance or of any rules made thereunder, he shall be punishable with imprisonment for a term which may extend to one year, or with fine, or with both.

Cognizance of offence.

30. No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the First Class shall try an offence punishable under this Ordinance.

CHAPTER VI

MISCELLANEOUS

Provisions of this Ordinance not to apply in certain cases.

31. The provisions of this Ordinance shall not apply to—

- (a) a lien on any goods, money or security given by or under the Indian Contract Act, 1872 or the Sale of Goods Act, 1930 or any other law for the time being in force; 9 of 1872.
3 of 1930.
- (b) a pledge of movables within the meaning of section 172 of the Indian Contract Act, 1872; 9 of 1872.
- (c) creation of any security in any aircraft as defined in clause (1) of section 2 of the Aircraft Act, 1934; 24 of 1934.
- (d) creation of security interest in any vessel as defined in clause (55) of section 3 of the Merchant Shipping Act, 1958; 44 of 1958.
- (e) any conditional sale, hire-purchase or lease or any other contract in which no security interest has been created;
- (f) any rights of unpaid seller under section 47 of the Sale of Goods Act, 1930; 3 of 1930.
- (g) any properties not liable to attachment or sale under the first proviso to sub-section (1) of section 60 of the Code of Civil Procedure, 1908; 5 of 1908.
- (h) any security interest for securing repayment of any financial asset not exceeding one lakh rupees;
- (i) any security interest created in agricultural land;
- (j) any case in which the amount due is less than twenty per cent. of the principal amount and interest thereon.

Protection of action taken in good faith.

32. No suit, prosecution or other legal proceedings shall lie against any secured creditor or any of his officers or manager exercising any of the rights of the secured creditor or borrower for anything done or omitted to be done in good faith under this Ordinance.

Offences by companies.

33. (1) Where an offence under this Ordinance has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company, for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Ordinance, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Ordinance has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm.

34. No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which a Debts Recovery Tribunal or an Appellate Tribunal is empowered by or under this Ordinance to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Ordinance or under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993.

Civil court not to have jurisdiction.

51 of 1993.

35. The provisions of this Ordinance shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.

The provisions of this Ordinance to override other laws.

36 of 1963.

36. No secured creditor shall be entitled to take all or any of the measures under sub-section (4) of section 13, unless his claim in respect of the financial asset is made within the period of limitation prescribed under the Limitation Act, 1963.

Limitation.

1 of 1956.
42 of 1956.
15 of 1992.
51 of 1993.

37. The provisions of this Ordinance or the rules made thereunder shall be in addition to, and not in derogation of, the Companies Act, 1956, the Securities Contracts (Regulation) Act, 1956, the Securities and Exchange Board of India Act, 1992, the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 or any other law for the time being in force.

Application of other laws not barred.

21 of 2000.

38. (1) The Central Government may, by notification and in the Electronic Gazette as defined in clause (s) of section 2 of the Information Technology Act, 2000, make rules for carrying out the provisions of this Ordinance.

Power of Central Government to make rules.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the form and manner in which an application may be filed under sub-section (10) of section 13;

(b) the manner in which the rights of a secured creditor may be exercised by one or more of his officers under sub-section (12) of section 13;

(c) the safeguards subject to which the records may be kept under sub-section (2) of section 22;

(d) the manner in which the particulars of every transaction of securitisation shall be filed under section 23 and fee for filing such transaction;

(e) the fee for inspecting the particulars of transactions kept under section 22 and entered in the Central Register under sub-section (1) of section 26;

(f) the fees for inspecting the Central Register maintained in electronic form under sub-section (2) of section 26;

(g) any other matter which is to be, or may be, prescribed, in respect of which provision is to be, or may be, made by rules.

(3) Every rule made under this Ordinance shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Certain provisions of this Ordinance to apply after registry is set up or caused to be set up.

39. The provisions of sub-sections (2), (3) and (4) of section 20 and sections 21, 22, 23, 24, 25, 26 and 27 shall apply after the Central Registry is set up or caused to be set up under sub-section (1) of section 20.

Power to remove difficulties.

40. (1) If any difficulty arises in giving effect to the provisions of this Ordinance, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Ordinance as may appear to be necessary for removing the difficulty:

Provided that no order shall be made under this section after the expiry of a period of two years from the commencement of this Ordinance.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

Amendments of certain enactments.

41. The enactments specified in the Schedule shall be amended in the manner specified therein.

THE SCHEDULE

(See section 41)

Year	Act No.	Short title	Amendment
1956	42	The Securities Contracts (Regulation) Act, 1956.	In section 2, in clause (h), after sub-clause (ib), insert the following:— “(ic) security receipt as defined in clause (zg) of section 2 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Ordinance, 2002.”
1986	1	The Sick Industrial Companies (Special Provisions) Act, 1985.	In section 15, in sub-section (1), after the proviso, insert the following:— “Provided further that no reference shall be made to the Board for Industrial and Financial Reconstruction after the commencement of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Ordinance, 2002, where financial assets have been acquired by any securitisation company or reconstruction company under sub-section (1) of section 5 of that Ordinance: Provided also that on or after the commencement of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Ordinance, 2002, where a reference is pending before the Board for Industrial and Financial Reconstruction, such reference shall abate if the secured creditors, representing not less than three-fourth in value of the amount outstanding against financial assistance disbursed to the borrower of such secured creditors, have taken any measures to recover their secured debt under sub-section (4) of section 13 of that Ordinance.”
1956	1	The Companies Act, 1956.	In section 4A, in sub-section (1), after clause (vi), insert the following:— “(vii) the securitisation company or reconstruction company which has obtained a certificate of registration under sub-section (4) of section 3 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Ordinance, 2002”.

Sd/-

K. R. NARAYANAN,
President

Sd/-

SUBHASH C. JAIN
Secy. to the Govt. of India

By Order and in the name of the Governor of Gujarat

V. M. KOTHARE -
Secretary to Government



सत्यमेव जयते

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Separate paging is given to this Part in order that it may be filed as a Separate Compilation.

PART - VI

Acts of Parliament and Ordinances Promulgated by the President

GOVERNMENT OF GUJARAT

LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT

Sachivalaya, Gandhinagar, Dated the :

No. : RPB/24/2002/Ord./302-E. : The following ordinance promulgated by the President and published in the Gazette of India, Extra-Ordinary, Part-II, Section-1. Dated the 21st August, 2002 is republished for general information :-

GOVERNMENT OF INDIA
MINISTRY OF LAW AND JUSTICE
(Legislative Department)

New Delhi, the 21st August, 2002 / SRAVANA 30, 1924 (Saka)

THE SECURITISATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY INTEREST (SECOND) ORDINANCE, 2002

No. 3 OF 2002

Promulgated by the President in the Fifty-third Year of the Republic of India.

An Ordinance to regulate securitisation and reconstruction of financial assets and enforcement of security interest and for matters connected therewith or incidental thereto.

WHEREAS the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Ordinance, 2002 to provide for the aforesaid matters was promulgated by the President on the 21st day of June, 2002;

AND WHEREAS the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Bill, 2002 was introduced in the House of the People to replace the said Ordinance but has not been passed;

AND WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action to give continued effect to the provisions of the said Ordinance;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:—

CHAPTER I

PRELIMINARY

Short title,
extent and
commence-
ment.

1. (1) This Ordinance may be called the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (Second) Ordinance, 2002.

(2) It extends to the whole of India.

(3) It shall be deemed to have come into force on the 21st day of June, 2002.

Definitions.

2. (1) In this Ordinance, unless the context otherwise requires,—

(a) "Appellate Tribunal" means a Debts Recovery Appellate Tribunal established under sub-section (1) of section 8 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993;

51 of 1993.

(b) "asset reconstruction" means acquisition by any securitisation company or reconstruction company of any right or interest of any bank or financial institution in any financial assistance for the purpose of realisation of such financial assistance;

(c) "bank" means—

(i) a banking company; or

(ii) a corresponding new bank; or

(iii) the State Bank of India; or

(iv) a subsidiary bank; or

(v) such other bank which the Central Government may, by notification, specify for the purposes of this Ordinance;

(d) "banking company" shall have the meaning assigned to it in clause (c) of section 5 of the Banking Regulation Act, 1949;

10 of 1949.

(e) "Board" means the Securities and Exchange Board of India established under section 3 of the Securities and Exchange Board of India Act, 1992;

15 of 1992.

(f) "borrower" means any person who has been granted financial assistance by any bank or financial institution or who has given any guarantee or created any mortgage or pledge as security for the financial assistance granted by any bank or financial institution and includes a person who becomes borrower of a securitisation company or reconstruction company consequent upon acquisition by it of any rights or interest of any bank or financial institution in relation to such financial assistance;

(g) "Central Registry" means the registry set up or cause to be set up under sub-section (1) of section 20;

(h) "corresponding new bank" shall have the meaning assigned to it in clause (da) of section 5 of the Banking Regulation Act, 1949:

10 of 1949.

(i) "Debts Recovery Tribunal" means the Tribunal established under sub-section (1) of section 3 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993,

51 of 1993.

(j) "default" means non-payment of any principal debt or interest thereon or any other amount payable by a borrower to any secured creditor consequent upon which the account of such borrower is classified as non-performing asset in the books of account of the secured creditor in accordance with the directions or guidelines issued by the Reserve Bank;

(k) "financial assistance" means any loan or advance granted or any debentures or bonds subscribed or any guarantees given or letters of credit established or any other credit facility extended by any bank or financial institution;

(l) "financial asset" means debt or receivables and includes—

(i) a claim to any debt or receivables or part thereof, whether secured or unsecured; or

(ii) any debt or receivables secured by, mortgage of, or charge on, immovable property; or

(iii) a mortgage, charge, hypothecation or pledge of movable property; or

(iv) any right or interest in the security, whether full or part underlying such debt or receivables; or

(v) any beneficial interest in property, whether movable or immovable, or in such debt, receivables, whether such interest is existing, future, accruing, conditional or contingent; or

(vi) any financial assistance;

(m) "financial institution" means—

1 of 1956.

(i) a public financial institution within the meaning of section 4A of the Companies Act, 1956;

51 of 1993.

(ii) any institution specified by the Central Government under sub-clause (ii) of clause (h) of section 2 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993;

42 of 1958.

(iii) International Finance Corporation established under the International Finance Corporation (Status, Immunities and Privileges) Act, 1958;

2 of 1934.

(iv) any other institution or non-banking financial company as defined in clause (f) of section 45-1 of the Reserve Bank of India Act, 1934, which the Central Government may, by notification, specify as financial institution for the purposes of this Ordinance;

(n) "hypothecation" means a charge in or upon any movable property, existing or future, created by a borrower in favour of a secured creditor without delivery of possession of the movable property to such creditor, as a security for financial assistance and includes floating charge and crystallisation of such charge into fixed charge on movable property;

(o) "non-performing asset" means an asset or account of a borrower, which has been classified by a bank or financial institution as sub-standard, doubtful or loss asset, in accordance with the directions or under guidelines relating to asset classifications issued by the Reserve Bank;

(p) "notification" means a notification published in the Official Gazette;

(q) "obligor" means a person liable to the originator, whether under a contract or otherwise, to pay a financial asset or to discharge any obligation in respect of a financial asset, whether existing, future, conditional or contingent and includes the borrower;

(r) "originator" means the owner of a financial asset which is acquired by a securitisation company or reconstruction company for the purpose of securitisation or asset reconstruction;

(s) "prescribed" means prescribed by rules made under this Ordinance;

(t) "property" means—

(i) immovable property;

(ii) movable property;

(iii) any debt or any right to receive payment of money, whether secured or unsecured;

(iv) receivables, whether existing or future;

(v) intangible assets, being know-how, patent, copyright, trade mark, licence, franchise or any other business or commercial right of similar nature;

(u) "qualified institutional buyer" means a financial institution, insurance company, bank, state financial corporation, state industrial development corporation, trustee or any asset management company making investment on behalf of mutual fund or provident fund or gratuity fund or pension fund or a foreign institutional investor registered under the Securities and Exchange Board of India Act, 1992 or regulations made thereunder, or any other body corporate as may be specified by the Board;

15 of 1992.

(v) "reconstruction company" means a company formed and registered under the Companies Act, 1956 for the purpose of asset reconstruction;

1 of 1956.

(w) "Registrar of Companies" means the Registrar defined in clause (40) of section 2 of the Companies Act, 1956;

1 of 1956.

(x) "Reserve Bank" means the Reserve Bank of India constituted under section 3 of the Reserve Bank of India Act, 1934;

2 of 1934.

(y) "scheme" means a scheme inviting subscription to security receipts proposed to be issued by a securitisation company or reconstruction company under that scheme;

(z) "securitisation" means acquisition of financial assets by any securitisation company or reconstruction company from any originator, whether by raising of funds by such securitisation company or reconstruction company from qualified institutional buyers by issue of security receipts representing undivided interest in such financial assets or otherwise;

(za) "securitisation company" means any company formed and registered under the Companies Act, 1956 for the purpose of securitisation;

1 of 1956.

(zb) "security agreement" means an agreement, instrument or any other document or arrangement under which security interest is created in favour of the secured creditor including the creation of mortgage by deposit of title deeds with the secured creditor;

(zc) "secured asset" means the property on which security interest is created;

(zd) "secured creditor" means any bank or financial institution or any consortium or group of banks or financial institutions and includes—

(i) debenture trustee appointed by any bank or financial institution; or

(ii) securitisation company or reconstruction company; or

(iii) any other trustee holding securities on behalf of a bank or financial institution,

in whose favour security interest is created for due repayment by any borrower of any financial assistance;

(ze) "secured debt" means a debt which is secured by any security interest;

(zf) "security interest" means right, title and interest of any kind whatsoever upon property, created in favour of any secured creditor and includes any mortgage, charge, hypothecation, assignment other than those specified in section 31;

(zg) "security receipt" means a receipt or other security, issued by a securitisation company or reconstruction company to any qualified institutional buyer pursuant to a scheme, evidencing the purchase or acquisition by the holder thereof, of an undivided right, title or interest in the financial asset involved in securitisation;

(zh) "sponsor" means any person holding not less than ten per cent. of the paid-up equity capital of a securitisation company or reconstruction company;

23 of 1955. (zi) "State Bank of India" means the State Bank of India constituted under section 3 of the State Bank of India Act, 1955;

38 of 1959. (zj) "subsidiary bank" shall have the meaning assigned to it in clause (k) of section 2 of the State Bank of India (Subsidiary Banks) Act, 1959.

9 of 1872. (2) Words and expressions used and not defined in this Ordinance but defined in the Indian Contract Act, 1872 or the Transfer of Property Act, 1882 or the Companies Act, 1956
4 of 1882. or the Securities and Exchange Board of India Act, 1992 shall have the same meanings
1 of 1956. respectively assigned to them in those Acts.
15 of 1992.

CHAPTER II

REGULATION OF SECURITISATION AND RECONSTRUCTION OF FINANCIAL ASSETS OF BANKS AND FINANCIAL INSTITUTIONS

3. (1) No securitisation company or reconstruction company shall commence or carry on the business of securitisation or asset reconstruction without—

Registration of securitisation companies or reconstruction companies.

(a) obtaining a certificate of registration granted under this section; and

(b) having the owned fund of not less than two crore rupees or such other amount not exceeding fifteen per cent. of total financial assets acquired or to be acquired by the securitisation company or reconstruction company, as the Reserve Bank may, by notification, specify:

Provided that the Reserve Bank may, by notification, specify different amounts of owned fund for different class or classes of securitisation companies or reconstruction companies:

Provided further that a securitisation company or reconstruction company, existing on the commencement of this Ordinance, shall make an application for registration to the Reserve Bank before the expiry of six months from such commencement and notwithstanding anything contained in this sub-section may continue to carry on the business of securitisation or asset reconstruction until a certificate of registration is granted to it or, as the case may be, rejection of application for registration is communicated to it.

(2) Every securitisation company or reconstruction company shall make an application for registration to the Reserve Bank in such form and manner as it may specify.

(3) The Reserve Bank may, for the purpose of considering the application for registration of a securitisation company or reconstruction company to commence or carry on the business of securitisation or asset reconstruction, as the case may be, require to be satisfied, by an inspection of records or books of such securitisation company or reconstruction company, or otherwise, that the following conditions are fulfilled, namely:—

(a) that the securitisation company or reconstruction company has not incurred losses in any of the three preceding financial years;

(b) that such securitisation company or reconstruction company has made adequate arrangements for realisation of the financial assets acquired for the purpose of securitisation or asset reconstruction and shall be able to pay periodical returns and redeem on respective due dates on the investments made in the company by the qualified institutional buyers or other persons;

(c) that the directors of securitisation company or reconstruction company have adequate professional experience in matters related to finance, securitisation and reconstruction;

(d) that the board of directors of such securitisation company or reconstruction company does not consist of more than half of its total number of directors who are either nominees of any sponsor or associated in any manner with the sponsor or any of its subsidiaries;

(e) that any of its directors has not been convicted of any offence involving moral turpitude;

(f) that a sponsor, is not a holding company of the securitisation company or reconstruction company, as the case may be, or, does not otherwise hold any controlling interest in such securitisation company or reconstruction company;

(g) that the securitisation company or reconstruction company has complied with or is in a position to comply with prudential norms specified by the Reserve Bank.

(4) The Reserve Bank may, after being satisfied that the conditions specified in sub-section (3) are fulfilled, grant a certificate of registration to the securitisation company or the reconstruction company to commence or carry on business of securitisation or asset reconstruction, subject to such conditions, which it may consider, fit to impose.

(5) The Reserve Bank may reject the application made under sub-section (2) if it is satisfied that the conditions specified in sub-section (3) are not fulfilled:

Provided that before rejecting the application, the applicant shall be given a reasonable opportunity of being heard.

(6) Every securitisation company or reconstruction company, shall obtain prior approval of the Reserve Bank for any substantial change in its management or change of location of its registered office or change in its name:

Provided that the decision of the Reserve Bank, whether the change in management of a securitisation company or a reconstruction company is a substantial change in its management or not, shall be final.

Explanation.—For the purposes of this section, the expression “substantial change in management” means the change in the management by way of transfer of shares or amalgamation or transfer of the business of the company.

Cancellation of certificate of registration. 4. (1) The Reserve Bank may cancel a certificate of registration granted to a securitisation company or a reconstruction company, if such company—

(a) ceases to carry on the business of securitisation or asset reconstruction; or

(b) ceases to receive or hold any investment from a qualified institutional buyer;

or

(c) has failed to comply with any conditions subject to which the certificate of registration has been granted to it; or

(d) at any time fails to fulfil any of the conditions referred to in clauses (a) to (g) of sub-section (3) of section 3; or

(e) fails to —

(i) comply with any direction issued by the Reserve Bank under the provisions of this Ordinance; or

(ii) maintain accounts in accordance with the requirements of any law or any direction or order issued by the Reserve Bank under the provisions of this Ordinance; or

(iii) submit or offer for inspection its books of account or other relevant documents when so demanded by the Reserve Bank; or

(iv) obtain prior approval of the Reserve Bank required under sub-section (6) of section 3:

Provided that before cancelling a certificate of registration on the ground that the securitisation company or reconstruction company has failed to comply with the provisions of clause (c) or has failed to fulfil any of the conditions referred to in clause (d) or sub-clause (iv) of clause (e), the Reserve Bank, unless it is of the opinion that the delay in cancelling the certificate of registration granted under sub-section (4) of section 3 shall be prejudicial to the public interest or the interests of the investors or the securitisation company or the reconstruction company, shall give an opportunity to such company on such terms as the Reserve Bank may specify for taking necessary steps to comply with such provisions or fulfilment of such conditions.

(2) A securitisation company or reconstruction company aggrieved by the order of rejection of application for registration or cancellation of certificate of registration may prefer an appeal, within a period of thirty days from the date on which such order of rejection or cancellation is communicated to it, to the Central Government:

Provided that before rejecting an appeal such company shall be given a reasonable opportunity of being heard.

(3) A securitisation company or reconstruction company, which is holding investments of qualified institutional buyers and whose application for grant of certificate of registration has been rejected or certificate of registration has been cancelled shall, notwithstanding such rejection or cancellation, be deemed to be a securitisation company or reconstruction company until it repays the entire investments held by it (together with interest, if any) within such period as the Reserve Bank may direct.

5. (1) Notwithstanding anything contained in any agreement or any other law for the time being in force, any securitisation company or reconstruction company may acquire financial assets of any bank or financial institution—

Acquisition of rights or interest in financial assets.

(a) by issuing a debenture or bond or any other security in the nature of the debenture, for consideration agreed upon between such company and the bank or financial institution, incorporating therein such terms and conditions as may be agreed upon between them; or

(b) by entering into an agreement with such bank or financial institution for the transfer of such financial assets to such company on such terms and conditions as may be agreed upon between them.

(2) If the bank or financial institution is a lender in relation to any financial assets acquired under sub-section (1) by the securitisation company or the reconstruction company such securitisation company or reconstruction company shall, on such acquisition, be deemed to be the lender and all the rights of such bank or financial institution shall vest in such company in relation to such financial assets.

(3) Unless otherwise expressly provided by this Ordinance, all contracts, deeds, bonds, agreements, powers-of-attorney, grants of legal representation, permissions, approvals, consents or no objections under any law or otherwise and other instruments of whatever nature which relate to the said financial asset and which are subsisting or having effect immediately before the acquisition of financial asset under sub-section (1) and to which the concerned bank or financial institution is a party or which are in favour of such bank or financial institution shall, after the acquisition of the financial assets, be of as full force and effect against or in favour of the securitisation company or reconstruction company, as the case may be, and may be enforced or acted upon as fully and effectually as if, in the place of

the said bank or financial institution, the securitisation company or the reconstruction company, as the case may be, had been a party thereto or as if they had been issued in favour of the securitisation company or reconstruction company, as the case may be.

(4) If, on the date of acquisition of financial asset under sub-section (1), any suit, appeal or other proceeding of whatever nature relating to the said financial asset is pending by or against the bank or financial institution, save as provided in the third proviso to sub-section (1) of section 15 of the Sick Industrial Companies (Special Provisions) Act, 1985, the same shall not abate, or be discontinued or be, in any way, prejudicially affected by reason of the acquisition of financial asset by the securitisation company or reconstruction company, as the case may be, but the suit, appeal or other proceeding may be continued, prosecuted and enforced by or against the securitisation company or reconstruction company, as the case may be.

Notice to obligor and discharge of obligation of such obligor.

6. (1) The bank or financial institution may, if it considers appropriate, give a notice of acquisition of financial assets by any securitisation company or reconstruction company, to the concerned obligor and any other concerned person and to the concerned registering authority (including Registrar of Companies) in whose jurisdiction the mortgage, charge, hypothecation, assignment or other interest created on the financial assets had been registered.

(2) Where a notice of acquisition of financial asset under sub-section (1) is given by a bank or financial institution, the obligor, on receipt of such notice, shall make payment to the concerned securitisation company or reconstruction company, as the case may be, and payment made to such company in discharge of any of the obligations in relation to the financial asset specified in the notice shall be a full discharge to the obligor making the payment from all liability in respect of such payment.

(3) Where no notice of acquisition of financial asset under sub-section (1) is given by any bank or financial institution, any money or other properties subsequently received by the bank or financial institution, shall constitute monies or properties held in trust for the benefit of and on behalf of the securitisation company or reconstruction company, as the case may be, and such bank or financial institution shall hold such payment or property which shall forthwith be made over or delivered to such securitisation company or reconstruction company, as the case may be, or its agent duly authorised in this behalf.

Issue of security by raising of receipts or funds by securitisation company or reconstruction company.

7. (1) Without prejudice to the provisions contained in the Companies Act, 1956, the Securities Contracts (Regulation) Act, 1956 and the Securities and Exchange Board of India Act, 1992, any securitisation company or reconstruction company, may, after acquisition of any financial asset under sub-section (1) of section 5, offer security receipts to qualified institutional buyers (other than by offer to public) for subscription in accordance with the provisions of those Acts.

(2) A securitisation company or reconstruction company may raise funds from the qualified institutional buyers by formulating schemes for acquiring financial assets and shall keep and maintain separate and distinct accounts in respect of each such scheme for every financial asset acquired out of investments made by a qualified institutional buyer and ensure that realisations of such financial asset is held and applied towards redemption of investments and payment of returns assured on such investments under the relevant scheme.

(3) In the event of non-realisation under sub-section (2) of financial assets, the qualified institutional buyers of a securitisation company or reconstruction company holding security receipts of not less than seventy-five per cent. of the total value of the security receipts issued by such company, shall be entitled to call a meeting of all the qualified institutional buyers and every resolution passed in such meeting shall be binding on the company.

(4) The qualified institutional buyers shall, at a meeting called under sub-section (3), follow the same procedure, as nearly as possible as is followed at meetings of the board of directors of the securitisation company or reconstruction company, as the case may be.

16 of 1908. 8. Notwithstanding anything contained in sub-section (1) of section 17 of the Registration Act, 1908,—

Exemption from registration of security receipt.

(a) any security receipt issued by the securitisation company or reconstruction company, as the case may be, under sub-section (1) of section 7, and not creating, declaring, assigning, limiting or extinguishing any right, title or interest, to or in immovable property except in so far as it entitles the holder of the security receipt to an undivided interest afforded by a registered instrument; or

(b) any transfer of security receipts, shall not require compulsory registration.

9. Without prejudice to the provisions contained in any other law for the time being in force, a securitisation company or reconstruction company may, for the purposes of asset reconstruction, having regard to the guidelines framed by the Reserve Bank in this behalf, provide for any one or more of the following measures, namely:—

Measures for assets reconstruction.

(a) the proper management of the business of the borrower, by change in, or take over of, the management of the business of the borrower;

(b) the sale or lease of a part or whole of the business of the borrower;

(c) rescheduling of payment of debts payable by the borrower;

(d) enforcement of security interest in accordance with the provisions of this Ordinance;

(e) settlement of dues payable by the borrower;

(f) taking possession of secured assets in accordance with the provisions of this Ordinance.

10. (1) Any securitisation company or reconstruction company registered under section 3 may —

Other functions of securitisation company or reconstruction company.

(a) act as an agent for any bank or financial institution for the purpose of recovering their dues from the borrower on payment of such fee or charges as may be mutually agreed upon between the parties;

(b) act as a manager referred to in clause (c) of sub-section (4) of section 13 on such fee as may be mutually agreed upon between the parties;

(c) act as receiver if appointed by any court or tribunal:

Provided that no securitisation company or reconstruction company shall act as a manager if acting as such gives rise to any pecuniary liability.

(2) Save as otherwise provided in sub-section (1), no securitisation company or reconstruction company which has been granted a certificate of registration under sub-section (4) of section 3, shall commence or carry on, without prior approval of the Reserve Bank, any business other than that of securitisation or asset reconstruction:

Provided that a securitisation company or reconstruction company which is carrying on, on or before the commencement of this Ordinance, any business other than the business of securitisation or asset reconstruction or business referred to in sub-section (1), shall cease to carry on any such business within one year from the date of commencement of this Ordinance.

Explanation.—For the purposes of this section, “securitisation company” or “reconstruction company” does not include its subsidiary.

11. Where any dispute relating to securitisation or reconstruction or non-payment of any amount due including interest arises amongst any of the parties, namely, the bank or financial institution or a securitisation company or reconstruction company or qualified institutional buyer, such dispute shall be settled by conciliation or arbitration as provided in

Resolution of disputes.

the Arbitration and Conciliation Act, 1996, as if the parties to the dispute have consented in writing for determination of such dispute by conciliation or arbitration and the provisions of that Act shall apply accordingly. 26 of 1996.

Power of Reserve Bank to determine policy and issue directions.

12. (1) If the Reserve Bank is satisfied that in the public interest or to regulate financial system of the country to its advantage or to prevent the affairs of any securitisation company or reconstruction company from being conducted in a manner detrimental to the interest of investors or in any manner prejudicial to the interest of such securitisation company or reconstruction company, it is necessary or expedient so to do, it may determine the policy and give directions to all or any securitisation company or reconstruction company in matters relating to income recognition, accounting standards, making provisions for bad and doubtful debts, capital adequacy based on risk weights for assets and also relating to deployment of funds by the securitisation company or reconstruction company, as the case may be, and such company shall be bound to follow the policy so determined and the directions so issued.

(2) Without prejudice to the generality of the power vested under sub-section (1), the Reserve Bank may give directions to any securitisation company or reconstruction company generally or to a class of securitisation companies or reconstruction companies or to any securitisation company or reconstruction company in particular as to—

(a) the type of financial asset of a bank or financial institution which can be acquired and procedure for acquisition of such assets and valuation thereof;

(b) the aggregate value of financial assets which may be acquired by any securitisation company or reconstruction company.

CHAPTER III

ENFORCEMENT OF SECURITY INTEREST

Enforcement of security interest.

13. (1) Notwithstanding anything contained in section 69 or section 69A of the Transfer of Property Act, 1882, any security interest created in favour of any secured creditor may be enforced, without the intervention of court or tribunal, by such creditor in accordance with the provisions of this Ordinance. 4 of 1882.

(2) Where any borrower, who is under a liability to a secured creditor under a security agreement, makes any default in repayment of secured debt or any instalment thereof, and his account in respect of such debt is classified by the secured creditor as non-performing asset, then, the secured creditor may require the borrower by notice in writing to discharge in full his liabilities to the secured creditor within sixty days from the date of notice failing which the secured creditor shall be entitled to exercise all or any of the rights under sub-section (4).

(3) The notice referred to in sub-section (2) shall give details of the amount payable by the borrower and the secured assets intended to be enforced by the secured creditor in the event of non-payment of secured debts by the borrower.

(4) In case the borrower fails to discharge his liability in full within the period specified in sub-section (2), the secured creditor may take recourse to one or more of the following measures to recover his secured debt, namely:—

(a) take possession of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset;

(b) take over the management of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale and realise the secured asset;

(c) appoint any person (hereafter referred to as the manager) to manage the secured assets the possession of which has been taken over by the secured creditor;

(d) require at any time by notice in writing, any person who has acquired any of the secured assets from the borrower and from whom any money is due or may become due to the borrower, to pay the secured creditor, so much of the money as is sufficient to pay the secured debt.

(5) Any payment made by any person referred to in clause (d) of sub-section (4) to the secured creditor shall give such person a valid discharge as if he has made payment to the borrower.

(6) Any transfer of secured asset after taking possession thereof or take over of management under sub-section (4), by the secured creditor or by the manager on behalf of the secured creditors shall vest in the transferee all rights in, or in relation to, the secured asset transferred as if the transfer had been made by the owner of such secured asset.

(7) Where any action has been taken against a borrower under the provisions of sub-section (4), all costs, charges and expenses which, in the opinion of the secured creditor, have been properly incurred by him or any expenses incidental thereto, shall be recoverable from the borrower and the money which is received by the secured creditor shall, in the absence of any contract to the contrary, be held by him in trust, to be applied, firstly, in payment of such costs, charges and expenses and secondly, in discharge of the dues of the secured creditor and the residue of the money so received shall be paid to the person entitled thereto in accordance with his rights and interests.

(8) If the dues of the secured creditor together with all costs, charges and expenses incurred by him are tendered to the secured creditor at any time before the date fixed for sale or transfer, the secured asset shall not be sold or transferred by the secured creditor, and no further step shall be taken by him for transfer or sale of that secured asset.

(9) In the case of financing of a financial asset by more than one secured creditors or joint financing of a financial asset by secured creditors, no secured creditor shall be entitled to exercise any or all of the rights conferred on him under or pursuant to sub-section (4) unless exercise of such right is agreed upon by the secured creditors representing not less than three-fourth in value of the amount outstanding as on a record date and such action shall be binding on all the secured creditors:

Provided that in the case of a company in liquidation, the amount realised from the sale of secured assets shall be distributed in accordance with the provisions of section 529A of the Companies Act, 1956:

1 of 1956.

Provided further that in the case of a company being wound up on or after the commencement of this Ordinance, the secured creditor of such company, who opts to realise his security instead of relinquishing his security and proving his debt under proviso to sub-section (1) of section 529 of the Companies Act, 1956, may retain the sale proceeds of his secured assets after depositing the workmen's dues with the liquidator in accordance with the provisions of section 529A of that Act:

1 of 1956.

Provided also that the liquidator referred to in the second proviso shall intimate the secured creditor the workmen's dues in accordance with the provisions of section 529A of the Companies Act, 1956 and in case such workmen's dues cannot be ascertained, the liquidator shall intimate the estimated amount of workmen's dues under that section to the secured creditor and in such case the secured creditor may retain the sale proceeds of the secured assets after depositing the amount of such estimated dues with the liquidator:

1 of 1956.

Provided also that in case the secured creditor deposits the estimated amount of workmen's dues, such creditor shall be liable to pay the balance of the workmen's dues or entitled to receive the excess amount, if any, deposited by the secured creditor with the liquidator:

Provided also that the secured creditor shall furnish an undertaking to the liquidator to pay the balance of the workmen's dues, if any.

Explanation.—For the purposes of this sub-section,—

(a) "record date" means the date agreed upon by the secured creditors representing not less than three-fourth in value of the amount outstanding on such date;

(b) "amount outstanding" shall include principal, interest and any other dues payable by the borrower to the secured creditor in respect of secured asset as per the books of account of the secured creditor.

(10) Where dues of the secured creditor are not fully satisfied with the sale proceeds of the secured assets, the secured creditor may file an application in the form and manner as may be prescribed to the Debts Recovery Tribunal having jurisdiction or a competent court, as the case may be, for recovery of the balance amount from the borrower.

(11) Without prejudice to the rights conferred on the secured creditor under or by this section, the secured creditor shall be entitled to proceed against the guarantors or sell the pledged assets without first taking any of the measures specified in clauses (a) to (d) of sub-section (4) in relation to the secured assets under this Ordinance.

(12) The rights of a secured creditor under this Ordinance may be exercised by one or more of his officers authorised in this behalf in such manner as may be prescribed.

(13) No borrower shall, after receipt of notice referred to in sub-section (2), transfer by way of sale, lease or otherwise (other than in the ordinary course of his business) any of his secured assets referred to in the notice, without prior written consent of the secured creditor.

Chief
Metropolitan
Magistrate
or District
Magistrate to
assist secured
creditor
in taking
possession of
secured asset.

14. (1) Where the possession of any secured asset is required to be taken by the secured creditor or if any of the secured asset is required to be sold or transferred by the secured creditor under the provisions of this Ordinance, the secured creditor may, for the purpose of taking possession or control of any such secured asset, request, in writing, the Chief Metropolitan Magistrate or the District Magistrate within whose jurisdiction any such secured asset or other documents relating thereto may be situated or found, to take possession thereof, and the Chief Metropolitan Magistrate or, as the case may be, the District Magistrate shall, on such request being made to him—

(a) take possession of such asset and documents relating thereto; and

(b) forward such asset and documents to the secured creditor.

(2) For the purpose of securing compliance with the provisions of sub-section (1), the Chief Metropolitan Magistrate or the District Magistrate may take or cause to be taken such steps and use, or cause to be used, such force, as may, in his opinion, be necessary.

(3) No act of the Chief Metropolitan Magistrate or the District Magistrate done in pursuance of this section shall be called in question in any court or before any authority.

Manner and
effect of take
over of
management.

15. (1) When the management of business of a borrower is taken over by a secured creditor, the secured creditor may, by publishing a notice in a newspaper published in English language and in a newspaper published in an Indian language in circulation in the place where the principal office of the borrower is situated, appoint as many persons as it thinks fit—

(a) in a case in which the borrower is a company as defined in the Companies Act, 1956, to be the directors of that borrower in accordance with the provisions of that Act; or

(b) in any other case, to be the administrator of the business of the borrower.

(2) On publication of a notice under sub section (1),—

(a) in any case where the borrower is a company as defined in the Companies Act, 1956, all persons holding office as directors of the company and in any other case,

all persons holding any office having power of superintendence, direction and control of the business of the borrower immediately before the publication of the notice under sub-section (1), shall be deemed to have vacated their offices as such;

(b) any contract of management between the borrower and any director or manager thereof holding office as such immediately before publication of the notice under sub-section (1), shall be deemed to be terminated;

(c) the directors or the administrators appointed under this section shall take such steps as may be necessary to take into their custody or under their control all the property, effects and actionable claims to which the business of the borrower is, or appears to be, entitled and all the property and effects of the business of the borrower shall be deemed to be in the custody of the directors or administrators, as the case may be, as from the date of the publication of the notice;

(d) the directors appointed under this section shall, for all purposes, be the directors of the company of the borrower and such directors or, as the case may be, the administrators appointed under this section, shall alone be entitled to exercise all the powers of the directors or, as the case may be, of the persons exercising powers of superintendence, direction and control, of the business of the borrower whether such powers are derived from the memorandum or articles of association of the company of the borrower or from any other source whatsoever.

1 of 1956. (3) Where the management of the business of a borrower, being a company as defined in the Companies Act, 1956, is taken over by the secured creditor, then, notwithstanding anything contained in the said Act or in the memorandum or articles of association of such borrower,—

(a) it shall not be lawful for the shareholders of such company or any other person to nominate or appoint any person to be a director of the company;

(b) no resolution passed at any meeting of the shareholders of such company shall be given effect to unless approved by the secured creditor;

(c) no proceeding for the winding up of such company or for the appointment of a receiver in respect thereof shall lie in any court, except with the consent of the secured creditor.

(4) Where the management of the business of a borrower had been taken over by the secured creditor, the secured creditor shall, on realisation of his debt in full, restore the management of the business of the borrower to him.

16. (1) Notwithstanding anything to the contrary contained in any contract or in any other law for the time being in force, no managing director or any other director or a manager or any person in charge of management of the business of the borrower shall be entitled to any compensation for the loss of office or for the premature termination under this Ordinance of any contract of management entered into by him with the borrower.

No compensation to directors for loss of office.

(2) Nothing contained in sub-section (1) shall affect the right of any such managing director or any other director or manager or any such person in charge of management to recover from the business of the borrower, moneys recoverable otherwise than by way of such compensation.

17. (1) Any person (including borrower) aggrieved by any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor or his authorised officer under this Chapter, may prefer an appeal to the Debts Recovery Tribunal having jurisdiction in the matter within forty-five days from the date on which such measures had been taken.

Right to appeal

(2) Where an appeal is preferred by a borrower, such appeal shall not be entertained by the Debts Recovery Tribunal unless the borrower has deposited with the Debts Recovery Tribunal seventy-five per cent. of the amount claimed in the notice referred to in sub-section (2) of section 13:

Provided that the Debts Recovery Tribunal may, for reasons to be recorded in writing, waive or reduce the amount to be deposited under this section.

(3) Save as otherwise provided in this Ordinance, the Debts Recovery Tribunal shall, as far as may be, dispose of the appeal in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and rules made thereunder.

51 of 1993.

Appeal to
Appellate
Tribunal.

18. (1) Any person aggrieved by any order made by the Debts Recovery Tribunal under section 17 may prefer an appeal to the Appellate Tribunal within thirty days from the date of receipt of the order of Debts Recovery Tribunal.

(2) Save as otherwise provided in this Ordinance, the Appellate Tribunal shall, as far as may be, dispose of the appeal in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and rules made thereunder.

51 of 1993.

Right of
borrower to
receive
compensation
and costs in
certain cases.

19. If the Debts Recovery Tribunal or the Appellate Tribunal, as the case may be, on an appeal filed under section 17 or section 18, holds the possession of secured assets by the secured creditor as wrongful and directs the secured creditor to return such secured assets to the concerned borrower, such borrower shall be entitled to payment of such compensation and costs as may be determined by such Tribunal or the Appellate Tribunal.

CHAPTER IV

CENTRAL REGISTRY

Central
Registry.

20. (1) The Central Government may, by notification, set up or cause to be set up from such date as it may specify in such notification, a registry to be known as the Central Registry with its own seal for the purposes of registration of transaction of securitisation and reconstruction of financial assets and creation of security interest under this Ordinance.

(2) The head office of the Central Registry shall be at such place as the Central Government may specify and for the purpose of facilitating registration of transactions referred to in sub-section (1), there may be established at such other places as the Central Government may think fit, branch offices of the Central Registry.

(3) The Central Government may, by notification, define the territorial limits within which an office of the Central Registry may exercise its functions.

(4) The provisions of this Ordinance pertaining to the Central Registry shall be in addition to and not in derogation of any of the provisions contained in the Registration Act, 1908, the Companies Act, 1956, the Merchant Shipping Act, 1958, the Patents Act, 1970, the Motor Vehicles Act, 1988, and the Designs Act, 2000 or any other law requiring registration of charges and shall not affect the priority of charges or validity thereof under those Acts or laws.

16 of 1908.
1 of 1956.
44 of 1958.
39 of 1970.
59 of 1988.
16 of 2000.

Central
Registrar.

21. (1) The Central Government may, by notification, appoint a person for the purpose of registration of transactions relating to securitisation, reconstruction of financial assets and security interest created over properties, to be known as the Central Registrar.

(2) The Central Government may appoint such other officers with such designations as it thinks fit for the purpose of discharging, under the superintendence and direction of the Central Registrar, such functions of the Central Registrar under this Ordinance as he may, from time to time, authorise them to discharge.

Register of
securitisation,
reconstruction
and security
interest
transaction.

22. (1) For the purposes of this Ordinance, a record called the Central Register shall be kept at the head office of the Central Registry for entering the particulars of the transactions relating to—

- (a) securitisation of financial assets;
- (b) reconstruction of financial assets; and
- (c) creation of security interest.

(2) Notwithstanding anything contained in sub-section (1), it shall be lawful for the Central Registrar to keep the records wholly or partly in computer, floppies, diskettes or in any other electronic form subject to such safeguards as may be prescribed.

(3) Where such register is maintained wholly or partly on computer, floppies, diskettes or in any other electronic form, under sub-section (2), any reference in this Ordinance to entry in the Central Register shall be construed as a reference to any entry as maintained on computer or in any other electronic form.

(4) The register shall be kept under the control and management of the Central Registrar.

23. The particulars of every transaction of securitisation, asset reconstruction or creation of security interest shall be filed, with the Central Registrar in the manner and on payment of such fee as may be prescribed, within thirty days after the date of such transaction or creation of security, by the securitisation company or reconstruction company or the secured creditor, as the case may be.

Filing of transactions of securitisation, reconstruction and creation of security interest.

Provided that the Central Registrar may allow the filing of the particulars of such transaction or creation of security interest within thirty days next following the expiry of the said period of thirty days on payment of such additional fee not exceeding ten times the amount of such fee.

24. Whenever the terms or conditions, or the extent or operation, of any security interest registered under this Chapter, are, or is, modified, it shall be the duty of the securitisation company or the reconstruction company or the secured creditor, as the case may be, to send to the Central Registrar, the particulars of such modification, and the provisions of this Chapter as to registration of a security interest shall apply to such modification of such security interest.

Modification of security interest registered under this Ordinance.

25. (1) The securitisation company or the reconstruction company or the secured creditor, as the case may be, shall give intimation to the Central Registrar of the payment or satisfaction in full, of any security interest relating to the securitisation company or the reconstruction company or the secured creditor and requiring registration under this Chapter, within thirty days from the date of such payment or satisfaction.

Securitisation company or reconstruction company or secured creditor to report satisfaction of security interest.

(2) The Central Registrar shall, on receipt of such intimation, cause a notice to be sent to the securitisation company or reconstruction company or the secured creditor calling upon it to show cause within a time not exceeding fourteen days specified in such notice, as to why payment or satisfaction should not be recorded as intimated to the Central Registrar.

(3) If no cause is shown, the Central Registrar shall order that a memorandum of satisfaction shall be entered in the Central Register.

(4) If cause is shown, the Central Registrar shall record a note to that effect in the Central Register, and shall inform the borrower that he has done so.

26. (1) The particulars of securitisation or reconstruction or security interest entered in the Central Register of such transactions kept under section 22 shall be open during the business hours for inspection by any person on payment of such fee as may be prescribed.

Right to inspect particulars of securitisation, reconstruction and security interest transactions.

(2) The Central Register referred to in sub-section (1) maintained in electronic form, shall also be open during the business hours for the inspection of any person through electronic media on payment of such fee as may be prescribed.

CHAPTER V

OFFENCES AND PENALTIES

27. If a default is made—

Penalties.

(a) In filing under section 23, the particulars of every transaction of any securitisation or asset reconstruction or security interest created by a securitisation company or reconstruction company or secured creditor; or

(b) in sending under section 24, the particulars of the modification referred to in that section; or

(c) in giving intimation under section 25, every company and every officer of the company or the secured creditor and every officer of the secured creditor who is in default shall be punishable with fine which may extend to five thousand rupees for every day during which the default continues.

Penalties for non-compliance of direction of Reserve Bank.

28. If any securitisation company or reconstruction company fails to comply with any direction issued by the Reserve Bank under section 12, such company and every officer of the company who is in default, shall be punishable with fine which may extend to five lakh rupees and in the case of a continuing offence, with an additional fine which may extend to ten thousand rupees for every day during which the default continues.

Offences.

29. If any person contravenes or attempts to contravene or abets the contravention of the provisions of this Ordinance or of any rules made thereunder, he shall be punishable with imprisonment for a term which may extend to one year, or with fine, or with both.

Cognizance of offence.

30. No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the First Class shall try any offence punishable under this Ordinance.

CHAPTER VI

MISCELLANEOUS

Provisions of this Ordinance not to apply in certain cases.

31. The provisions of this Ordinance shall not apply to—

(a) a lien on any goods, money or security given by or under the Indian Contract Act, 1872 or the Sale of Goods Act, 1930 or any other law for the time being in force;

(b) a pledge of movables within the meaning of section 172 of the Indian Contract Act, 1872;

(c) creation of any security in any aircraft as defined in clause (f) of section 2 of the Aircraft Act, 1934;

(d) creation of security interest in any vessel as defined in clause (55) of section 3 of the Merchant Shipping Act, 1958;

(e) any conditional sale, hire-purchase or lease or any other contract in which no security interest has been created;

(f) any rights of unpaid seller under section 47 of the Sale of Goods Act, 1930;

(g) any properties not liable to attachment or sale under the first proviso to sub-section (1) of section 60 of the Code of Civil Procedure, 1908;

(h) any security interest for securing repayment of any financial asset not exceeding one lakh rupees;

(i) any security interest created in agricultural land;

(j) any case in which the amount due is less than twenty per cent. of the principal amount and interest thereon.

Protection of action taken in good faith.

32. No suit, prosecution or other legal proceedings shall lie against any secured creditor or any of his officers or manager exercising any of the rights of the secured creditor or borrower for anything done or omitted to be done in good faith under this Ordinance.

Offences by companies.

33. (1) Where an offence under this Ordinance has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company, for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Ordinance, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Ordinance has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section.—

(a) “company” means any body corporate and includes a firm or other association of individuals; and

(b) “director”, in relation to a firm, means a partner in the firm.

34. No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which a Debts Recovery Tribunal or the Appellate Tribunal is empowered by or under this Ordinance to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Ordinance or under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993.

Civil court not to have jurisdiction.

35. The provisions of this Ordinance shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.

The provisions of this Ordinance to override other laws.

36. No secured creditor shall be entitled to take all or any of the measures under sub-section (4) of section 13, unless his claim in respect of the financial asset is made within the period of limitation prescribed under the Limitation Act, 1963.

Limitation.

37. The provisions of this Ordinance or the rules made thereunder shall be in addition to, and not in derogation of, the Companies Act, 1956, the Securities Contracts (Regulation) Act, 1956, the Securities and Exchange Board of India Act, 1992, the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 or any other law for the time being in force.

Application of other laws not barred.

38. (1) The Central Government may, by notification and in the Electronic Gazette as defined in clause (s) of section 2 of the Information Technology Act, 2000, make rules for carrying out the provisions of this Ordinance.

Power of Central Government to make rules.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the form and manner in which an application may be filed under sub-section (10) of section 13;

(b) the manner in which the rights of a secured creditor may be exercised by one or more of his officers under sub-section (12) of section 13;

(c) the safeguards subject to which the records may be kept under sub-section (2) of section 22;

(d) the manner in which the particulars of every transaction of securitisation shall be filed under section 23 and fee for filing such transaction;

(e) the fee for inspecting the particulars of transactions kept under section 22 and entered in the Central Register under sub-section (1) of section 26;

(f) the fee for inspecting the Central Register maintained in electronic form under sub-section (2) of section 26;

(g) any other matter which is to be, or may be, prescribed, in respect of which provision is to be, or may be, made by rules.

(3) Every rule made under this Ordinance shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Certain provisions of this Ordinance to apply after registry is set up or caused to be set up.

39. The provisions of sub-sections (2), (3) and (4) of section 20 and sections 21, 22, 23, 24, 25, 26 and 27 shall apply after the Central Registry is set up or cause to be set up under sub-section (1) of section 20.

Power to remove difficulties.

40. (1) If any difficulty arises in giving effect to the provisions of this Ordinance, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Ordinance as may appear to be necessary for removing the difficulty:

Provided that no order shall be made under this section after the expiry of a period of two years from the commencement of this Ordinance.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

Amendments to certain enactments.

41. The enactments specified in the Schedule shall be amended in the manner specified therein.

Repeal and saving.

42. (1) The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Ordinance, 2002 is hereby repealed.

Ord. 2 of 2002.

(2) Notwithstanding such repeal, any thing done or any action taken under the said Ordinance shall be deemed to have been done or taken under the corresponding provisions of this Ordinance.

THE SCHEDULE

(See section 41)

<i>Year</i>	<i>Act No.</i>	<i>Short title</i>	<i>Amendment</i>
1956	1	The Companies Act, 1956.	In section 4A, in sub-section (1), after clause (vi), insert the following:— “(vii) the securitisation company or the reconstruction company which has obtained a certificate of registration under sub-section (4) of section 3 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (Second) Ordinance, 2002.”
1956	42	The Securities Contracts (Regulation) Act, 1956.	In section 2, in clause (h), after sub-clause (ib), insert the following:— “(ic) security receipt as defined in clause (zg) of section 2 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (Second) Ordinance, 2002.”
1986	1	The Sick Industrial Companies (Special Provisions) Act, 1985.	In section 15, in sub-section (1), after the proviso, insert the following:— “Provided further that no reference shall be made to the Board for Industrial and Financial Reconstruction after the commencement of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (Second) Ordinance, 2002, where financial assets have been acquired by any securitisation company or reconstruction company under sub-section (1) of section 5 of that Ordinance: Provided also that on or after the commencement of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (Second) Ordinance, 2002, where a reference is pending before the Board for Industrial and Financial Reconstruction, such reference shall abate if the secured creditors, representing not less than three-fourth in value of the amount outstanding against financial assistance disbursed to the borrower of such secured creditors, have taken any measures to recover their secured debt under sub-section (4) of section 13 of that Ordinance.”

Sd/-

A. P. J. ABDUL KALAM,
President.

Sd/-

SUBHASH JAIN,
Secy. to the Govt. of India.

By order and in the name of the Governor of Gujarat.

V. M. KOTHARE,
Secretary to Government.



सत्यमेव जयते

The Gujarat Government Gazette

EXTRAORDINARY

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Separate paging is given to this Part in order that it may be filed as a Separate Compilation.

PART - VI

Acts of Parliament and Ordinances Promulgated by the President LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT

Sachivalaya, Gandhinagar, 23rd September, 2002.

No. RPB/25/2002/ord-402/E.-The following ordinance promulgated by the President and published in the Gazette of India, Extra-ordinary, Part-II, Section 1, dated the 24th August, 2002 is republished for general information :-

GOVERNMENT OF INDIA

MINISTRY OF LAW AND JUSTICE

(Legislative Department)

New Delhi, the 24th August, 2002/Bhadra 2, 1924 (Saka)

THE REPRESENTATION OF THE PEOPLE (AMENDMENT) ORDINANCE, 2002

No. 4 OF 2002

Promulgated by the President in the Fifty-third Year of the Republic of India.

An Ordinance further to amend the Representation of the People Act, 1951.

WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:-

1. (1) This Ordinance may be called the Representation of the People (Amendment) Ordinance, 2002.

Short title and
commencement.

(2) Save as otherwise provided in this Ordinance, the provisions of this Ordinance shall come into force at once.

Insertion of new
section 33A.

2. After section 33 of the Representation of the People Act, 1951 43 of 1951.
(hereinafter referred to as the principal Act), the following section
shall be inserted, namely:-

Right to
information.

"33A. (1) A candidate shall, apart from any information
which he is required to furnish, under this Act or the rules made
thereunder, in his nomination paper delivered under sub-section
(1) of section 33, also furnish the information as to whether—

(i) he is accused of any offence punishable with
imprisonment for two years or more in a pending case in
which a charge has been framed by the court of competent
jurisdiction;

(ii) he has been convicted of an offence [other than
any offence referred to in sub-section (1) or sub-section (2),
or covered in sub-section (3), of section 8] and sentenced to
imprisonment for one year or more.

(2) The candidate or his proposer, as the case may be, shall,
at the time of delivering to the returning officer the nomination
paper under sub-section (1) of section 33, also deliver to him an
affidavit sworn by the candidate in a prescribed form verifying the
information specified in sub-section (1).

(3) The returning officer shall, as soon as may be after the
furnishing of information to him under sub-section (1), display
the aforesaid information by affixing a copy of the affidavit,
delivered under sub-section (2), at a conspicuous place at his office
for the information of the electors relating to a constituency for
which the nomination paper is delivered."

Insertion of new
section 33B.

3. After section 33A of the principal Act as so inserted, the
following section shall be inserted and shall be deemed to have been
inserted with effect from the 2nd day of May, 2002, namely:-

Candidate to furnish
information only
under the Act and
the rules.

"33B. Notwithstanding anything contained in any
judgment, decree or order of any court or any direction, order or
any other instruction issued by the Election Commission, no
candidate shall be liable to disclose or furnish any such
information, in respect of his election, which is not required to
be disclosed or furnished under this Act or the rules made
thereunder."

Insertion of new
Chapter VIIA.

4. In Part V of the principal Act, after Chapter VII, the following
Chapter shall be inserted, namely:-

'CHAPTER VIIA

DECLARATION OF ASSETS AND LIABILITIES

Declaration of
assets and liabilities.

75A. (1) Every elected candidate for a House of Parliament or
the Legislature of a State shall, within ninety days from the date on
which he makes and subscribes an oath or affirmation, according

to the form set out for the purpose in the Third Schedule to the Constitution, for taking his seat in either House of Parliament or in the Legislative Assembly of a State or the Legislative Council of a State, as the case may be, furnish the information, relating to-

(i) the movable and immovable property of which he is the owner or a beneficiary;

(ii) his liabilities to any public financial institution; and

(iii) his liabilities to the Central Government or the State Government,

to the Chairman of the Council of States or the Speaker of the House of the People or the Chairman of the Legislative Council of a State or the Speaker of the Legislative Assembly of a State, as the case may be.

(2) The information under sub-section (1) shall be furnished in such form and in such manner as may be prescribed in the rules made under sub-section (3).

(3) The Chairman of the Council of States or the Speaker of the House of the People or the Chairman of the Legislative Council of a State or the Speaker of the Legislative Assembly of a State, as the case may be, may make rules for the purposes of sub-section (2).

(4) The rules made by the Chairman of the Council of States or the Speaker of the House of the People or, as the case may be, by the Chairman of the Legislative Council of a State or the Speaker of the Legislative Assembly of a State under sub-section (3) shall be laid, as soon as may be after they are made, before the Council of States or the House of the People or the Legislative Council or the Legislative Assembly, as the case may be, for a total period of thirty days which may be comprised in one session or in two or more successive sessions and shall take effect upon the expiry of the said period of thirty days unless they are sooner approved with or without modifications or disapproved by the Council of States or the House of the People or the Legislative Council or the Legislative Assembly and where they are so approved, they shall take effect on such approval in the form in which they were laid or in such modified form, as the case may be, and where they are so disapproved, they shall be of no effect.

(5) The Chairman of the Council of States or the Speaker of the House of the People or, as the case may be, the Chairman of the Legislative Council of a State or the Speaker of the Legislative Assembly of a State may direct that any wilful contravention of the rules made under sub-section (3) by an elected candidate referred to in sub-section (1) may be dealt with in the same manner as a breach of privilege of the Council of States or the House of the People or the Legislative Council or the Legislative Assembly, as the case may be.

Explanation. - For the purposes of this section,-

(i) "immovable property" means the land and includes any building or other structure attached to the land or permanently fastened to anything which is attached to the land;

(ii) "movable property" means any other property which is not the immovable property and includes corporeal and incorporeal property of every description;

(iii) "public financial institution" means a public financial institution within the meaning of section 4A of the Companies Act, 1956 and includes bank; and

1 of 1956.

(iv) "bank" referred to in clause (iii) means -

(a) "State Bank of India" constituted under section 3 of the State Bank of India Act, 1955;

23 of 1955.

(b) "subsidiary bank" having the meaning assigned to it in clause (k) of section 2 of the State Bank of India (Subsidiary Banks) Act, 1959;

38 of 1959.

(c) "Regional Rural Bank" established under section 3 of the Regional Rural Banks Act, 1976;

21 of 1976.

(d) "corresponding new bank" having the meaning assigned to it in clause (da) of section 5 of the Banking Regulation Act, 1949; and

10 of 1949.

(e) "co-operative bank" having the meaning assigned to it in clause (ccf) of section 5 of the Banking Regulation Act, 1949 as modified by sub-clause (i) of clause (c) of section 56 of that Act.

10 of 1949.

Insertion of new section 125A.

5. After section 125 of the principal Act, the following section shall be inserted, namely:-

Penalty for filing false affidavit, etc.

"125A. A candidate who himself or through his proposer, with intent to be elected in an election,-

(i) fails to furnish information relating to sub-section (1) of section 33A; or

(ii) gives false information which he knows or has reason to believe to be false; or

(iii) conceals any information,

in his nomination paper delivered under sub-section (1) of section 33 or in his affidavit which is required to be delivered under sub-section (2) of section 33A, as the case may be, shall, notwithstanding anything contained in any other law for the

time being in force, be punishable with imprisonment for a term which may extend to six months, or with fine, or with both."

6. In section 169 of the principal Act, in sub-section (2), clause (a) shall be renumbered as clause (aa) thereof, and before clause (aa) as so renumbered, the following clause shall be inserted, namely:-

Amendment of
section 169.

"(a) the form of affidavit under sub-section (2) of section 33A,".

Sd/-

A. P. J. ABDUL KALAM,
President.

Sd/-

SUBHASH JAIN,
Secy. to the Govt. of India.

By order and in the name of the Governor of Gujarat,

V. M. KOTHARE,
Secretary to Government.

V1-Ex. 21-2

Government Central Press, Gandhinagar.



The Gujarat Government Gazette EXTRAORDINARY

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Separate paging is given to this Part in order that it may be filed as a Separate Compilation.

PART - VI

Acts of Parliament and Ordinances Promulgated by the President
LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT

Sachivalaya, Gandhinagar, 15th November, 2002.

No. : RPB/35/2002/ACT-1502/E : The following Act of Parliament is republished for general information :-

GOVERNMENT OF INDIA

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS,

(Legislative Department),

New Delhi, the 28th March, 2002/Chaitra 7, 1924 (Saka)

The following Act of Parliament received the assent of the President on the 28th March, 2002 and is hereby published for general information :-

THE PREVENTION OF TERRORISM ACT, 2002

AN ACT

(Act No. 15 of 2002)

(28th March, 2002)

to make provisions for the prevention of, and for dealing with, terrorist activities and for matters connected therewith.

BE it enacted by Parliament in the Fifty-third Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Prevention of Terrorism Act, 2002.
- (2) It extends to the whole of India.
- (3) Every person shall be liable to punishment under this Act for every act or omission contrary to the provisions thereof, of which he is held guilty in India.
- (4) Any person who commits an offence beyond India which is punishable under this Act shall be dealt with according to the provisions of this Act in the same manner as if such act had been committed in India.

Short title,
extent,
application,
commence-
ment,
duration and
savings.

(5) The provisions of this Act apply also to—

(a) citizens of India outside India;

(b) persons in the service of the Government, wherever they may be; and

(c) persons on ships and aircrafts, registered in India, wherever they may be.

(6) Save as otherwise provided in respect of entries at serial numbers 24 and 25 of the Schedule to this Act, it shall be deemed to have come into force on the 24th day of October, 2001 and shall remain in force for a period of three years from the date of its commencement, but its expiry under the operation of this sub-section shall not affect—

(a) the previous operation of, or anything duly done or suffered under this Act, or

(b) any right, privilege, obligation or liability acquired, accrued or incurred under this Act, or

(c) any penalty, forfeiture or punishment incurred in respect of any offence under this Act, or

(d) any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid,

and, any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed as if this Act had not expired.

Definitions.

2. (1) In this Act, unless the context otherwise requires,—

(a) "Code" means the Code of Criminal Procedure, 1973;

2 of 1974.

(b) "Designated Authority" shall mean such officer of the Central Government not below the rank of Joint Secretary to the Government, or such officer of the State Government not below the rank of Secretary to the Government, as the case may be, as may be specified by the Central Government or, as the case may be, the State Government, by a notification published in the Official Gazette;

(c) "proceeds of terrorism" shall mean all kinds of properties which have been derived or obtained from commission of any terrorist act or have been acquired through funds traceable to a terrorist act, and shall include cash irrespective of person in whose name such proceeds are standing or in whose possession they are found;

(d) "property" means property and assets of every description, whether corporeal or incorporeal, movable or immovable, tangible or intangible and deeds and instruments evidencing title to, or interest in, such property or assets and includes bank account;

(e) "Public Prosecutor" means a Public Prosecutor or an Additional Public Prosecutor or a Special Public Prosecutor appointed under section 28 and includes any person acting under the directions of the Public Prosecutor;

(f) "Special Court" means a Special Court constituted under section 23;

(g) "terrorist act" has the meaning assigned to it in sub-section (1) of section 3, and the expression "terrorist" shall be construed accordingly;

(h) "State Government", in relation to a Union territory, means the Administrator thereof;

(i) words and expressions used but not defined in this Act and defined in the Code shall have the meanings respectively assigned to them in the Code.

(2) Any reference in this Act to any enactment or any provision thereof shall, in relation to an area in which such enactment or such provision is not in force, be construed as a reference to the corresponding law or the relevant provision of the corresponding law, if any, in force in that area.

CHAPTER II

PUNISHMENT FOR, AND MEASURES FOR DEALING WITH, TERRORIST ACTIVITIES

3. (1) Whoever,—

(a) with intent to threaten the unity, integrity, security or sovereignty of India or to strike terror in the people or any section of the people does any act or thing by using bombs, dynamite or other explosive substances or inflammable substances or firearms or other lethal weapons or poisons or noxious gases or other chemicals or by any other substances (whether biological or otherwise) of a hazardous nature or by any other means whatsoever, in such a manner as to cause, or likely to cause, death of, or injuries to any person or persons or loss of, or damage to, or destruction of, property or disruption of any supplies or services essential to the life of the community or causes damage or destruction of any property or equipment used or intended to be used for the defence of India or in connection with any other purposes of the Government of India, any State Government or any of their agencies, or detains any person and threatens to kill or injure such person in order to compel the Government or any other person to do or abstain from doing any act;

Punishment
for terrorist
acts.

37 of 1967.

(b) is or continues to be a member of an association declared unlawful under the Unlawful Activities (Prevention) Act, 1967, or voluntarily does an act aiding or promoting in any manner the objects of such association and in either case is in possession of any unlicensed firearms, ammunition, explosive or other instrument or substance capable of causing mass destruction and commits any act resulting in loss of human life or grievous injury to any person or causes significant damage to any property,

commits a terrorist act.

Explanation.—For the purposes of this sub-section, “a terrorist act” shall include the act of raising funds intended for the purpose of terrorism.

(2) Whoever commits a terrorist act, shall,—

(a) if such act has resulted in the death of any person, be punishable with death or imprisonment for life and shall also be liable to fine;

(b) in any other case, be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine.

(3) Whoever conspires or attempts to commit, or advocates, abets, advises or incites or knowingly facilitates the commission of, a terrorist act or any act preparatory to a terrorist act, shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine.

(4) Whoever voluntarily harbours or conceals, or attempts to harbour or conceal any person knowing that such person is a terrorist shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to imprisonment for life and shall also be liable to fine:

Provided that this sub-section shall not apply to any case in which the harbour or concealment is by the husband or wife of the offender.

(5) Any person who is a member of a terrorist gang or a terrorist organisation, which is involved in terrorist acts, shall be punishable with imprisonment for a term which may extend to imprisonment for life or with fine which may extend to rupees ten lakh or with both.

Explanation.—For the purposes of this sub-section, “terrorist organisation” means an organisation which is concerned with or involved in terrorism.

(6) Whoever knowingly holds any property derived or obtained from commission of any terrorist act or has been acquired through the terrorist funds shall be punishable with imprisonment for a term which may extend to imprisonment for life or with fine which may extend to rupees ten lakh or with both.

(7) Whoever threatens any person who is a witness or any other person in whom such witness may be interested, with violence, or wrongfully restrains or confines the witness, or any other person in whom the witness may be interested, or does any other unlawful act with the said intent, shall be punishable with imprisonment which may extend to three years and fine.

Possession of certain unauthorised arms, etc.

4. Where any person is in unauthorised possession of any—

(a) arms or ammunition specified in columns (2) and (3) of Category I or Category III (a) of Schedule I to the Arms Rules, 1962, in a notified area,

(b) bombs, dynamite or hazardous explosive substances or other lethal weapons capable of mass destruction or biological or chemical substances of warfare in any area, whether notified or not,

he shall be guilty of terrorist act notwithstanding anything contained in any other law for the time being in force, and be punishable with imprisonment for a term which may extend to imprisonment for life or with fine which may extend to rupees ten lakh or with both.

Explanation.—In this section, “notified area” means such area as the State Government may, by notification in the Official Gazette, specify.

Enhanced penalties.

5. (1) If any person with intent to aid any terrorist contravenes any provision of, or any rule made under the Explosives Act, 1884, the Explosive Substances Act, 1908, the Inflammable Substances Act, 1952 or the Arms Act, 1959, he shall, notwithstanding anything contained in any of the aforesaid Acts or the rules made thereunder, be punishable with imprisonment for a term which may extend to imprisonment for life and shall also be liable to fine.

4 of 1884.
6 of 1908.
20 of 1952.
54 of 1959.

(2) For the purposes of this section, any person who attempts to contravene or abets, or does any act preparatory to the contravention of any provision of any law, rule or order, shall be deemed to have contravened that provision, and the provisions of sub-section (1) shall, in relation to such person, have effect subject to the modification that the reference to “imprisonment for life” shall be construed as a reference to “imprisonment for ten years”.

Holding of proceeds of terrorism illegal.

6. (1) No person shall hold or be in possession of any proceeds of terrorism.

(2) Proceeds of terrorism, whether held by a terrorist or by any other person and whether or not such person is prosecuted or convicted under this Act, shall be liable to be forfeited to the Central Government or the State Government, as the case may be, in the manner provided under this Chapter.

Powers of investigating officers and appeal against order of Designated Authority.

7. (1) If an officer (not below the rank of Superintendent of Police) investigating an offence committed under this Act, has reason to believe that any property in relation to which an investigation is being conducted, represents proceeds of terrorism, he shall, with the prior approval in writing of the Director General of the Police of the State in which such property is situated, make an order seizing such property and where it is not practicable to seize such property, make an order of attachment directing that such property shall not be transferred or otherwise dealt with except with the prior permission of the officer making such order, or of the Designated Authority before whom the properties seized or attached are produced and a copy of such order shall be served on the person concerned.

(2) For the removal of doubts, it is hereby provided that where an organisation is declared as a terrorist organisation under this Act and the investigating officer has reason

to believe that any person has custody of any property which is being used or is intended to be used for the purpose of such terrorist organisation, he may, by an order in writing, seize or attach such property,

(3) The investigating officer shall duly inform the Designated Authority within forty-eight hours of the seizure or attachment of such property.

(4) It shall be open to the Designated Authority before whom the seized or attached properties are produced either to confirm or revoke the order of attachment so issued:

Provided that an opportunity of making a representation by the person whose property is being attached shall be given.

(5) In the case of immovable property attached by the investigating officer, it shall be deemed to have been produced before the Designated Authority, when the investigating officer notifies his report and places it at the disposal of the Designated Authority.

(6) The investigating officer may seize and detain any cash to which this Chapter applies if he has reasonable grounds for suspecting that—

(a) it is intended to be used for the purposes of terrorism;

(b) it forms the whole or part of the resources of an organisation declared as terrorist organisation under this Act:

Provided that the cash seized under this sub-section by the investigating officer shall be released not later than the period of forty-eight hours beginning with the time when it is seized unless the matter involving the cash is before the Designated Authority and such Authority passes an order allowing its retention beyond forty-eight hours.

Explanation.—For the purposes of this sub-section, “cash” means—

(a) coins and notes in any currency;

(b) postal orders;

(c) traveller's cheques;

(d) banker's drafts; and

(e) such other monetary instruments as the Central Government or, as the case may be, the State Government may specify by an order made in writing.

(7) Any person aggrieved by an order made by the Designated Authority may prefer an appeal to the Special Court and the Special Court may either confirm the order of attachment of property or seizure so made or revoke such order and release the property.

8. Where any property is seized or attached on the ground that it constitutes proceeds of terrorism and the Special Court is satisfied in this regard under sub-section (7) of section 7, it may order forfeiture of such property, whether or not the person from whose possession it is seized or attached, is prosecuted in a Special Court for an offence under this Act.

Forfeiture of
proceeds of
terrorism.

9. (1) No order forfeiting any proceeds of terrorism shall be made under section 8 unless the person holding or in possession of such proceeds is given a notice in writing informing him of the grounds on which it is proposed to forfeit the proceeds of terrorism and such person is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of forfeiture and is also given a reasonable opportunity of being heard in the matter.

Issue of show
cause notice
before
forfeiture of
proceeds of
terrorism.

(2) No order of forfeiture shall be made under sub-section (1), if such person establishes that he is a *bona fide* transferee of such proceeds for value without knowing that they represent proceeds of terrorism.

(3) It shall be competent for the Special Court to make an order in respect of property seized or attached,—

(a) directing it to be sold if it is a perishable property and the provisions of section 459 of the Code shall, as nearly as may be practicable, apply to the net proceeds of such sale;

(b) nominating any officer of the Central or State Government, in the case of any other property, to perform the function of the Administrator of such property subject to such conditions as may be specified by the Special Court.

Appeal.

10. (1) Any person aggrieved by an order of forfeiture under section 8 may, within one month from the date of the receipt of such order, appeal to the High Court within whose jurisdiction, the Special Court, who passed the order appealed against, is situated.

(2) Where an order under section 8 is modified or annulled by the High Court or where in a prosecution instituted for the contravention of the provisions of this Act, the person against whom an order of forfeiture has been made under section 8 is acquitted, such property shall be returned to him and in either case if it is not possible for any reason to return the forfeited property, such person shall be paid the price therefor as if the property had been sold to the Central Government with reasonable interest calculated from the day of seizure of the property and such price shall be determined in the manner prescribed.

Order of forfeiture not to interfere with other punishments.

11. The order of forfeiture made under this Act by the Special Court, shall not prevent the infliction of any other punishment to which the person affected thereby is liable under this Act.

Claims by third party.

12. (1) Where any claim is preferred, or any objection is made to the seizure of any property under section 7 on the ground that such property is not liable to seizure, the Designated Authority before whom such property is produced, shall proceed to investigate the claim or objection:

Provided that no such investigation shall be made where the Designated Authority considers that the claim or objection is designed to cause unnecessary delay.

(2) In case claimant or objector establishes that the property specified in the notice issued under section 9 is not liable to be forfeited under the Act, the said notice shall be withdrawn or modified accordingly.

Powers of Designated Authority.

13. The Designated Authority, acting under the provisions of this Act, shall have all the powers of a civil court required for making a full and fair enquiry into the matter before it.

Obligation to furnish information.

14. (1) Notwithstanding anything contained in any other law, the officer investigating any offence under this Act, with prior approval in writing of an officer not below the rank of a Superintendent of Police, may require any officer or authority of the Central Government or a State Government or a local authority or a bank, or a company, or a firm or any other institution, establishment, organisation or any individual to furnish information in their possession in relation to such offence, on points or matters, where the investigating officer has reason to believe that such information will be useful for, or relevant to, the purposes of this Act.

(2) Failure to furnish the information called for under sub-section (1), or deliberately furnishing false information shall be punishable with imprisonment for a term which may extend to three years or with fine or with both.

(3) Notwithstanding anything contained in the Code, the offence under sub-section (1) shall be tried as a summary case and the procedure prescribed in Chapter XXI of the said Code [except sub-section (2) of section 262] shall be applicable thereto.

Certain transfers to be null and void.

15. Where, after the issue of an order under section 7 or issue of a notice under section 9, any property referred to in the said order or notice is transferred by any mode whatsoever, such transfer shall, for the purpose of the proceedings under this Act, be

ignored and if such property is subsequently forfeited, the transfer of such property shall be deemed to be null and void.

16. (1) Where any person is accused of any offence under this Act, it shall be open to the Special Court trying him to pass an order that all or any of the properties, movable or immovable or both belonging to him, shall, during the period of such trial, be attached, if not already attached under this Act.

Forfeiture of property of certain persons.

(2) Where a person has been convicted of any offence punishable under this Act, the Special Court may, in addition to awarding any punishment, by order in writing, declare that any property, movable or immovable or both, belonging to the accused and specified in the order, shall stand forfeited to the Central Government or the State Government, as the case may be, free from all encumbrances.

17. Where any shares in a company stand forfeited to the Central Government or the State Government, as the case may be, under this Act, then, the company shall, on receipt of the order of the Special Court, notwithstanding anything contained in the Companies Act, 1956, or the articles of association of the company, forthwith register the Central Government or the State Government, as the case may be, as the transferee of such shares.

Company to transfer shares to Government.

1 of 1956.

CHAPTER III

TERRORIST ORGANISATIONS

18. (1) For the purposes of this Act, an organisation is a terrorist organisation if—

Declaration of an organisation as a terrorist organisation.

(a) it is listed in the Schedule, or

(b) it operates under the same name as an organisation listed in that Schedule.

(2) The Central Government may by order, in the Official Gazette,—

(a) add an organisation to the Schedule;

(b) remove an organisation from that Schedule;

(c) amend that Schedule in some other way.

(3) The Central Government may exercise its power under clause (a) of sub-section (2) in respect of an organisation only if it believes that it is involved in terrorism.

(4) For the purposes of sub-section (3), an organisation shall be deemed to be involved in terrorism if it—

(a) commits or participates in acts of terrorism,

(b) prepares for terrorism,

(c) promotes or encourages terrorism, or

(d) is otherwise involved in terrorism.

19. (1) An application may be made to the Central Government for the exercise of its power under clause (b) of sub-section (2) of section 18 to remove an organisation from the Schedule.

Denotification of a terrorist organisation.

(2) An application may be made by—

(a) the organisation, or

(b) any person affected by inclusion of the organisation in the Schedule as a terrorist organisation.

(3) The Central Government may make rules to prescribe the procedure for admission and disposal of an application made under this section.

(4) Where an application under sub-section (1) has been refused, the applicant may apply for a review to the Review Committee constituted by the Central Government under

sub-section (1) of section 60 within one month from the date of receipt of the order by the applicant.

(5) The Review Committee may allow an application for review against refusal to remove an organisation from the Schedule, if it considers that the decision to refuse was flawed when considered in the light of the principles applicable on an application for judicial review.

(6) Where the Review Committee allows review under sub-section (5) by or in respect of an organisation, it may make an order under this sub-section.

(7) Where an order is made under sub-section (6), the Central Government shall, as soon as the certified copy of the order is received by it, make an order removing the organisation from the list in the Schedule.

Offence relating to membership of a terrorist organisation.

20. (1) A person commits an offence if he belongs or professes to belong to a terrorist organisation:

Provided that this sub-section shall not apply where the person charged is able to prove—

(a) that the organisation was not declared as a terrorist organisation at the time when he became a member or began to profess to be a member; and

(b) that he has not taken part in the activities of the organisation at any time during its inclusion in the Schedule as a terrorist organisation.

(2) A person guilty of an offence under this section shall be liable, on conviction, to imprisonment for a term not exceeding ten years or with fine or with both.

Offence relating to support given to a terrorist organisation.

21. (1) A person commits an offence if—

(a) he invites support for a terrorist organisation, and

(b) the support is not, or is not restricted to, the provision of money or other property within the meaning of section 22.

(2) A person commits an offence if he arranges, manages or assists in arranging or managing a meeting which he knows is—

(a) to support a terrorist organisation, or

(b) to further the activities of a terrorist organisation, or

(c) to be addressed by a person who belongs or professes to belong to a terrorist organisation.

(3) A person commits an offence if he addresses a meeting for the purpose of encouraging support for a terrorist organisation or to further its activities.

(4) A person guilty of an offence under this section shall be liable on conviction, to imprisonment for a term not exceeding ten years or with fine or with both.

Explanation.—For the purposes of this section, the expression “meeting” means a meeting of three or more persons whether or not the public are admitted.

Fund raising for a terrorist organisation to be an offence.

22. (1) A person commits an offence if he—

(a) invites another to provide money or other property, and

(b) intends that it should be used, or has reasonable cause to suspect that it may be used, for the purposes of terrorism.

(2) A person commits an offence if he—

(a) receives money or other property, and

(b) intends that it should be used, or has reasonable cause to suspect that it may be used, for the purposes of terrorism.

(3) A person commits an offence if he—

(a) provides money or other property, and

(b) knows or has reasonable cause to suspect that it will, or may be used for the purposes of terrorism.

(4) In this section, a reference to the provision of money or other property is a reference to its being given, lent or otherwise made available, whether or not for consideration.

(5) A person guilty of an offence under this section shall be liable on conviction, to imprisonment for a term not exceeding fourteen years or with fine or with both.

CHAPTER IV

SPECIAL COURTS

23. (1) The Central Government or a State Government may, by notification in the Official Gazette, constitute one or more Special Courts for such area or areas, or for such case or class or group of cases, as may be specified in the notification. Special Courts.

(2) Where a notification constituting a Special Court for any area or areas or for any case or class or group of cases is issued by the Central Government under sub-section (1), and a notification constituting a Special Court for the same area or areas or for the same case or class or group of cases has also been issued by the State Government under that sub-section, the Special Court constituted by the Central Government, whether the notification constituting such Court is issued before or after the issue of the notification constituting the Special Court by the State Government, shall have, and the Special Court constituted by the State Government shall not have, jurisdiction to try any offence committed in that area or areas or, as the case may be, the case or class or group of cases and all cases pending before any Special Court constituted by the State Government shall stand transferred to the Special Court constituted by the Central Government.

(3) Where any question arises as to the jurisdiction of any Special Court, it shall be referred to the Central Government whose decision in the matter shall be final.

(4) A Special Court shall be presided over by a judge to be appointed by the Central Government or, as the case may be, the State Government, with the concurrence of the Chief Justice of the High Court.

(5) The Central Government or, as the case may be, the State Government may also appoint, with the concurrence of the Chief Justice of the High Court, additional judges to exercise jurisdiction of a Special Court.

(6) A person shall not be qualified for appointment as a judge or an additional judge of a Special Court unless he is, immediately before such appointment, a sessions judge or an additional sessions judge in any State.

(7) For the removal of doubts, it is hereby provided that the attainment, by a person appointed as a judge or an additional judge of a Special Court, of the age of superannuation under the rules applicable to him in the service to which he belongs, shall not affect his continuance as such judge or additional judge.

(8) Where any additional judge or additional judges is or are appointed in a Special Court, the judge of the Special Court may, from time to time, by general or special order, in writing, provide for the distribution of business of the Special Court among all judges including himself and the additional judge or additional judges and also for the disposal of urgent business in the event of his absence or the absence of any additional judge.

24. A Special Court may, on its own motion, or on an application made by the Public Prosecutor and if it considers it expedient or desirable so to do, sit for any of its proceedings at any place other than its ordinary place of sitting: Place of sitting.

Provided that nothing in this section shall be construed to change the place of sitting of a Special Court constituted by a State Government to any place outside that State.

Jurisdiction of
Special
Courts.

25. (1) Notwithstanding anything contained in the Code, every offence punishable under any provision of this Act shall be triable only by the Special Court within whose local jurisdiction it was committed or, as the case may be, by the Special Court constituted for trying such offence under section 23.

(2) If, having regard to the exigencies of the situation prevailing in a State,—

(a) it is not possible to have a fair, impartial or speedy trial; or

(b) it is not feasible to have the trial without occasioning the breach of peace or grave risk to the safety of the accused, the witnesses, the Public Prosecutor and a judge of the Special Court or any of them; or

(c) it is not otherwise in the interests of justice,

the Supreme Court may transfer any case pending before a Special Court to any other Special Court within that State or in any other State and the High Court may transfer any case pending before a Special Court situated in that State to any other Special Court within the State.

(3) The Supreme Court or the High Court, as the case may be, may act under this section either on the application of the Central Government or a party interested and any such application shall be made by motion, which shall, except when the applicant is the Attorney-General of India, be supported by an affidavit or affirmation.

Power of
Special Courts
with respect
to other
offences.

26. (1) When trying any offence, a Special Court may also try any other offence with which the accused may, under the Code, be charged at the same trial if the offence is connected with such other offence.

(2) If, in the course of any trial under this Act of any offence, it is found that the accused person has committed any other offence under this Act or under any other law, the Special Court may convict such person of such other offence and pass any sentence or award punishment authorised by this Act or such rule or, as the case may be, under such other law.

Power to
direct for
samples, etc.

27. (1) When a police officer investigating a case requests the Court of a Chief Judicial Magistrate or the Court of a Chief Metropolitan Magistrate in writing for obtaining samples of handwriting, finger-prints, foot-prints, photographs, blood, saliva, semen, hair, voice of any accused person, reasonably suspected to be involved in the commission of an offence under this Act, it shall be lawful for the Court of a Chief Judicial Magistrate or the Court of a Chief Metropolitan Magistrate to direct that such samples be given by the accused person to the police officer either through a medical practitioner or otherwise, as the case may be.

(2) If any accused person refuses to give samples as provided in sub-section (1), the Court shall draw adverse inference against the accused.

Public
Prosecutors.

28. (1) For every Special Court, the Central Government or, as the case may be, the State Government, shall appoint a person to be the Public Prosecutor and may appoint one or more persons to be the Additional Public Prosecutor or Additional Public Prosecutors:

Provided that the Central Government or, as the case may be, the State Government, may also appoint for any case or class or group of cases, a Special Public Prosecutor.

(2) A person shall not be qualified to be appointed as a Public Prosecutor or an Additional Public Prosecutor or a Special Public Prosecutor under this section unless he has been in practice as an Advocate for not less than seven years or has held any post, for a period of not less than seven years, under the Union or a State, requiring special knowledge of law.

(3) Every person appointed as a Public Prosecutor or an Additional Public Prosecutor or a Special Public Prosecutor under this section shall be deemed to be a Public Prosecutor within the meaning of clause (u) of section 2 of the Code, and the provisions of the Code shall have effect accordingly.

29. (1) Subject to the provisions of section 50, a Special Court may take cognizance of any offence, without the accused being committed to it for trial, upon receiving a complaint of facts that constitute such offence or upon a police report of such facts.

Procedure and powers of Special Courts.

(2) Where an offence triable by a Special Court is punishable with imprisonment for a term not exceeding three years or with fine or with both, the Special Court may, notwithstanding anything contained in sub-section (1) of section 260 or section 262 of the Code, try the offence in a summary way in accordance with the procedure prescribed in the Code and the provisions of sections 263 to 265 of the Code, shall so far as may be, apply to such trial:

Provided that when, in the course of a summary trial under this sub-section, it appears to the Special Court that the nature of the case is such that it is undesirable to try it in a summary way, the Special Court shall recall any witnesses who may have been examined and proceed to re-hear the case in the manner provided by the provisions of the Code for the trial of such offence and the said provisions shall apply to and in relation to a Special Court as they apply to and in relation to a Magistrate:

Provided further that in the case of any conviction in a summary trial under this section, it shall be lawful for a Special Court to pass a sentence of imprisonment for a term not exceeding one year and with fine which may extend to rupees five lakh.

(3) Subject to the other provisions of this Act, a Special Court shall, for the purpose of trial of any offence, have all the powers of a Court of Session and shall try such offence as if it were a Court of Session so far as may be in accordance with the procedure prescribed in the Code for the trial before a Court of Session.

(4) Subject to the other provisions of this Act, every case transferred to a Special Court under section 25 shall be dealt with as if such case had been transferred under section 406 of the Code to such Special Court.

(5) Notwithstanding anything contained in the Code, but subject to the provisions of section 299 of the Code, a Special Court may, if it thinks fit and for reasons to be recorded by it, proceed with the trial in the absence of the accused or his pleader and record the evidence of any witness, subject to the right of the accused to recall the witness for cross-examination.

30. (1) Notwithstanding anything contained in the Code, the proceedings under this Act may, for reasons to be recorded in writing, be held in camera if the Special Court so desires.

Protection of witnesses.

(2) A Special Court, if on an application made by a witness in any proceeding before it or by the Public Prosecutor in relation to such witness or on its own motion, is satisfied that the life of such witness is in danger, it may, for reasons to be recorded in writing, take such measures as it deems fit for keeping the identity and address of such witness secret.

(3) In particular, and without prejudice to the generality of the provisions of sub-section (2), the measures which a Special Court may take under that sub-section may include—

(a) the holding of the proceedings at a place to be decided by the Special Court;

(b) the avoiding of the mention of the names and addresses of the witnesses in its orders or judgments or in any records of the case accessible to public;

(c) the issuing of any directions for securing that the identity and address of the witnesses are not disclosed;

(d) a decision that it is in the public interest to order that all or any of the proceedings pending before such a Court shall not be published in any manner.

(4) Any person who contravenes any decision or direction issued under sub-section (3) shall be punishable with imprisonment for a term which may extend to one year and with fine which may extend to one thousand rupees.

Trial by
Special Courts
to have
precedence.

31. The trial under this Act of any offence by a Special Court shall have precedence over the trial of any other case against the accused in any other court (not being a Special Court) and shall be concluded in preference to the trial of such other case and accordingly the trial of such other case shall remain in abeyance.

Certain
confessions
made to
police officers
to be taken
into consi-
deration.

32. (1) Notwithstanding anything in the Code or in the Indian Evidence Act, 1872, but subject to the provisions of this section, a confession made by a person before a police officer not lower in rank than a Superintendent of Police and recorded by such police officer either in writing or on any mechanical or electronic device like cassettes, tapes or sound tracks from out of which sound or images can be reproduced, shall be admissible in the trial of such person for an offence under this Act or the rules made thereunder.

1 of 1872.

(2) A police officer shall, before recording any confession made by a person under sub-section (1), explain to such person in writing that he is not bound to make a confession and that if he does so, it may be used against him:

Provided that where such person prefers to remain silent, the police officer shall not compel or induce him to make any confession.

(3) The confession shall be recorded in an atmosphere free from threat or inducement and shall be in the same language in which the person makes it.

(4) The person from whom a confession has been recorded under sub-section (1), shall be produced before the Court of a Chief Metropolitan Magistrate or the Court of a Chief Judicial Magistrate along with the original statement of confession, written or recorded on mechanical or electronic device within forty-eight hours.

(5) The Chief Metropolitan Magistrate or the Chief Judicial Magistrate, shall, record the statement, if any, made by the person so produced and get his signature or thumb impression and if there is any complaint of torture, such person shall be directed to be produced for medical examination before a Medical Officer not lower in rank than an Assistant Civil Surgeon and thereafter, he shall be sent to judicial custody.

Power to
transfer cases
to regular
courts.

33. Where, after taking cognizance of any offence, a Special Court is of the opinion that the offence is not triable by it, it shall, notwithstanding that it has no jurisdiction to try such offence, transfer the case for the trial of such offence to any court having jurisdiction under the Code and the Court to which the case is transferred may proceed with the trial of the offence as if it had taken cognizance of the offence.

Appeal.

34. (1) Notwithstanding anything contained in the Code, an appeal shall lie from any judgment, sentence or order, not being an interlocutory order, of a Special Court to the High Court both on facts and on law.

Explanation.—For the purposes of this section, “High Court” means a High Court within whose jurisdiction, a Special Court which passed the judgment, sentence or order, is situated.

(2) Every appeal under sub-section (1) shall be heard by a bench of two Judges of the High Court.

(3) Except as aforesaid, no appeal or revision shall lie to any court from any judgment, sentence or order including an interlocutory order of a Special Court.

(4) Notwithstanding anything contained in sub-section (3) of section 378 of the Code, an appeal shall lie to the High Court against an order of the Special Court granting or refusing bail.

(5) Every appeal under this section shall be preferred within a period of thirty days from the date of the judgment, sentence or order appealed from:

Provided that the High Court may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of thirty days.

35. (1) The jurisdiction conferred by this Act on a Special Court, shall, until a Special Court is constituted under section 23, in the case of any offence punishable under this Act, notwithstanding anything contained in the Code, be exercised by the Court of Session of the division in which such offence has been committed and it shall have all the powers and follow the procedure provided under this Chapter.

Transitional provisions and transfer of pending proceedings.

(2) On and from the date when the Special Court is constituted under section 23, every trial under the provisions of this Act, which would have been required to be held before the Special Court, shall stand transferred to that Court on the date on which it is constituted.

CHAPTER V

INTERCEPTION OF COMMUNICATION IN CERTAIN CASES

36. In this Chapter, unless the context otherwise requires,—

Definitions.

(a) "electronic communication" means any transmission of signs, signals, writings, images, sounds, data or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photo electronic or photo optical system that affects inland or foreign commerce but does not include—

(i) the radio portion of a cordless telephone communication that is transmitted between the wireless telephone hand-set and the base unit; or

(ii) any wire or oral communication; or

(iii) any communication made through a tone only paging device; or

(iv) any communication from a tracking device;

(b) "intercept" means the aural or other acquisition of the contents by wire, electronic or oral communication through the use of any electronic, mechanical or other device;

(c) "oral communication" means any oral communication uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation but such term does not include any electronic communication;

(d) "wire communication" means any aural transmission made in whole or part through the use of facilities for the transmission of communications by the aid of wire, cable or other like connection between the point of origin and the point of connection, between the point of origin and the point of reception (including the use of such connection in switching station) and such term includes any electronic storage of such communication.

37. The Central Government or the State Government, as the case may be, may appoint an officer not below the rank of Secretary to the Government in the case of State Government and not below the rank of Joint Secretary to the Government in the case of Central Government, to be the Competent Authority for the purposes of this Chapter.

Appointment of Competent Authority.

38. (1) A police officer not below the rank of Superintendent of Police supervising the investigation of any terrorist act under this Act may submit an application in writing to the Competent Authority for an order authorising or approving the interception of wire, electronic or oral communication by the investigating officer when he believes that such interception may provide, or has provided evidence of any offence involving a terrorist act.

Application for authorisation of interception of wire, electronic or oral communication.

(2) Each application shall include the following information:—

(a) the identity of the investigating officer making the application, and the head of the department authorising the application;

(b) a statement of the facts and circumstances relied upon by the applicant to justify his belief that an order should be issued, including—

(i) details as to the offence of terrorist act that has been, is being, or is about to be committed;

(ii) a particular description of the nature and location of the facilities from which or the place where the communication is to be intercepted;

(iii) a particular description of the type of communications sought to be intercepted; and

(iv) the identity of the person, if known, committing the terrorist act whose communications are to be intercepted;

(c) a statement of the period of time for which the interception is required to be maintained, if the nature of the enquiry is such that the authorisation of interception should not automatically terminate after the described type of communication has been first obtained;

(d) a particular description of facts establishing probable cause to believe that additional communications of the same type will occur thereafter; and

(e) where the application is for the extension of an order, a statement setting forth the results thus far obtained from the interception, or a reasonable explanation of the failure to obtain such results.

(3) The Competent Authority may require the applicant to furnish additional oral or documentary evidence in support of the application.

Decision by
Competent
Authority on
application for interception.

39. (1) Upon such application, the Competent Authority may reject the application, or issue an order, as requested or as modified, authorising or approving interception of wire, electronic or oral communications, if the Competent Authority determines on the basis of the facts submitted by the applicant that—

(a) there is a probable cause for belief that an individual is committing, has committed, or is about to commit, a particular offence described and made punishable under sections 3 and 4 of this Act;

(b) there is a probable cause of belief that particular communications concerning that offence may be obtained through such interception;

(c) there is probable cause of belief that the facilities from which, or the place where, the wire, electronic or oral communications are to be intercepted are being used or are about to be used, in connection with the commission of such offence, leased to, or are listed in, the name of or commonly used by such person.

(2) Each order by the Competent Authority authorising or approving the interception of any wire, electronic or oral communication under this section shall specify—

(a) the identity of the person, if known, whose communications are to be intercepted;

(b) the nature and location of the communication facilities as to which, or the place where, authority to intercept is granted;

(c) a particular description of the type of communication sought to be intercepted, and a statement of the particular offence to which it relates;

(d) the identity of the agency authorised to intercept the communications, and the person authorising the application; and

(e) the period of time during which such interception is authorised, including a statement as to whether or not the interception shall automatically terminate after the described communication has been first obtained.

40. (1) The Competent Authority shall, immediately after passing the order under sub-section (1) of section 39, but in any case not later than seven days from the passing of the order, submit a copy of the same to the Review Committee constituted under section 60 alongwith all the relevant underlying papers, record and his own findings, in respect of the said order, for consideration and approval of the order by the Review Committee.

Submission of order of interception to Review Committee.

(2) An order authorising the interception of a wire, electronic or oral communication under this section shall, upon request of the applicant, direct that a provider of wire or electronic communication service, landlord, custodian or other person shall furnish to the applicant forthwith all information, facilities and technical assistance necessary to accomplish the interception unobtrusively and with a minimum of interference with the services that such service provider, landlord, custodian or person is providing to the person whose communications are to be intercepted.

41. (1) No order issued under this section may authorise or approve the interception of any wire, electronic or oral communication for any period longer than is necessary to achieve the objective of the authorisation, nor in any event longer than sixty days and such sixty days period shall begin on the day immediately preceding the day on which the investigating officer first begins to conduct an interception under the order or ten days after order is issued whichever is earlier.

Duration of an order of interception, etc.

(2) The extension of an order may be granted, but only upon an application for an extension made in accordance with sub-section (1) of section 38 and the Competent Authority making the findings required by sub-section (1) of section 39, and the period of such extension shall be no longer than the Competent Authority deems necessary to achieve the purposes for which it was granted and in no event for longer than sixty days at a time.

(3) Every order and extension thereof shall contain a provision that the authorisation to intercept shall be executed as soon as practicable and shall be conducted in such manner as to minimise the interception of communications not otherwise subject to interception under this section and shall terminate upon attainment of the authorised objective, or in any event on the expiry of the period of said order or extension thereof.

42. (1) An interception under this Chapter may be conducted in whole or in part by a public servant, acting under the supervision of the investigating officer authorised to conduct the interception.

Authority competent to carry out interception.

(2) Whenever an order authorising an interception is issued pursuant to this section, the order may require reports to be made to the Competent Authority who issued the order showing that progress has been made towards achievement of the authorised objective and the need for continued interception and such report shall be made at such intervals as the Competent Authority may require.

43. (1) Notwithstanding anything contained in any other provision of this Chapter, an officer not below the rank of Additional Director General of Police or a police officer of equivalent rank who reasonably determines that—

Interception of communication in emergency.

(a) an emergency situation exists that involves—

(i) immediate danger of death or serious physical injury to any person;

or

(ii) conspiratorial activities threatening the security or interest of the State; or

(iii) conspiratorial activities, characteristic of a terrorist act, that requires a wire, electronic or oral communication to be intercepted before an order from the Competent Authority authorising such interception can, with due diligence, be obtained; and

(b) there are grounds on which an order should be issued under this section to authorise such interception,

may authorise, in writing, the investigating officer to intercept such wire, electronic or oral communication, if an application for an order approving the interception is made in accordance with the provisions of sub-sections (1) and (2) of section 38 within forty-eight hours after the interception has occurred, or begins to occur.

(2) In the absence of an order approving the interception made under sub-section (1), such interception shall immediately terminate when the communication sought is obtained or when the application for the order is rejected, whichever is earlier; and in the event of an application for permitting interception being rejected under sub-section (1) of section 39 or an application under sub-section (1) of this section for approval being rejected, or in any other case where the interception is terminated without an order having been issued, the contents of any wire, electronic or oral communication intercepted shall be treated as having been obtained in violation of this section.

Protection of
information
collected.

44. (1) The contents of any wire, electronic or oral communication intercepted by any means authorised by this Chapter shall, as far as possible, be recorded on tape or wire or other comparable device and shall be done in such manner as to protect the recording from editing or other alterations.

(2) Immediately upon the expiration of the period of order, or extension thereof, such recording shall be made available to the Competent Authority issuing such order and shall be sealed under his directions and kept in the custody of such person or authority as the Competent Authority orders, and such recordings shall not be destroyed except upon an order of the Competent Authority and in any event shall be kept for ten years.

(3) Applications made and orders issued under this Chapter shall be sealed by the Competent Authority and custody of the applications and orders shall be kept in such manner as the Competent Authority directs, and shall not be destroyed except on an order of the Competent Authority, and in any event shall be kept for ten years.

Admissibility
of evidence
collected
through the
interception
of communi-
cations.

45. Notwithstanding anything in the Code or in any other law for the time being in force, the evidence collected through the interception of wire, electronic or oral communication under this Chapter shall be admissible as evidence against the accused in the Court during the trial of a case:

Provided that, the contents of any wire, electronic or oral communication intercepted pursuant to this Chapter or evidence derived therefrom shall not be received in evidence or otherwise disclosed in any trial, hearing or other proceeding in any court unless each accused has been furnished with a copy of the order of the Competent Authority, and accompanying application, under which the interception was authorised or approved not less than ten days before trial, hearing or proceeding:

Provided further that, the period of ten days may be waived by the judge trying the matter, if he comes to the conclusion that it was not possible to furnish the accused with the above information ten days before the trial, hearing or proceeding and that the accused will not be prejudiced by the delay in receiving such information.

Review of
authorisation
order.

46. (1) The Review Committee constituted by the Central Government or the State Government, as the case may be, shall review every order passed by the Competent Authority under section 39.

(2) Every order passed by the Competent Authority under section 39, or disapproved by the officer under section 43, shall be placed before the Review Committee, which shall be considered by the Review Committee within ten days after its receipt, to decide whether the order was necessary, reasonable and justified.

(3) The Review Committee, after examining the entire record and holding such enquiry, if any, deemed necessary may, by order in writing, either approve the order passed by the Competent Authority or may issue order disapproving the same.

(4) On issue of an order of disapproval by the Review Committee, the interception, if any, already commenced shall be forthwith discontinued and the intercepted communication, if any, in the form of tape, wire or other device shall, thereupon, not be admissible as evidence in any case and shall be directed to be destroyed.

47. Except as otherwise specifically provided in section 39, any police officer who—

(a) intentionally intercepts, endeavours to intercept, or procures any other person to intercept or endeavour to intercept any wire, electronic or oral communication;

(b) intentionally uses, endeavours to use, or procures any other person to use or endeavours to use any electronic, mechanical or other device to intercept any oral communication when—

(i) such device is affixed to, or otherwise transmits a signal through a wire, cable, or other like connection used in wire communication; or

(ii) such device transmits communications by radio, or interferes with the transmission of such communication;

(c) intentionally discloses, or endeavours to disclose, to any other person the contents of any wire, electronic or oral communication, knowing or having reason to know that the information was obtained through the interception of a wire, electronic or oral communication in violation of this Chapter;

(d) intentionally uses, or endeavours to use, the contents of any wire, electronic or oral communication, knowing or having reason to know that the information was obtained through the interception of a wire, electronic or oral communication in violation of this Chapter;

(e) intentionally discloses, or endeavours to disclose, to any other unauthorised person the contents of any wire, electronic or oral communication, intercepted by means authorised by section 39;

(f) intentionally continues the interception of wire, electronic or oral communication after the issue of an order of rejection by the Competent Authority under this Chapter;

(g) intentionally continues the interception of wire, electronic or oral communication after the issue of an order of disapproval by the Review Committee under sub-section (3) of section 46,

shall for such violation be punishable with imprisonment for a term which may extend to one year and with fine up to rupees fifty thousand.

48. (1) The Central Government and the State Government, as the case may be, shall cause an annual report to be prepared giving a full account of—

(a) the number of applications for authorisation of interceptions received by the Competent Authority from the Police Department in which prosecutions have been launched;

(b) the number of such applications permitted or rejected;

(c) the number of interceptions carried out in emergency situations and the number of approvals granted or rejected in such matters;

(d) the number of prosecutions launched based on such interceptions and convictions resulting from such interceptions, along with an explanatory memorandum giving general assessment of the utility and importance of the interceptions authorised.

Interception and disclosure of wire, electronic or oral communications prohibited.

Annual report of interceptions.

(2) An annual report shall be laid by the State Government before the State Legislature within three months of the completion of every calendar year:

Provided that, if the State Government is of the opinion that the inclusion of any matter in the annual report would be prejudicial to the security of the State or to the prevention or detection of any terrorist act, the State Government may exclude such matter from being included in such annual report.

(3) An annual report shall be laid by the Central Government before each House of Parliament within three months of the completion of every calendar year:

Provided that, if the Central Government is of the opinion that the inclusion of any matter in the annual report would be prejudicial to the security of the country or to the prevention or detection of any terrorist act, the Central Government may exclude such matter from being included in such annual report.

CHAPTER VI

MISCELLANEOUS

Modified
application of
certain
provisions of
the Code.

49. (1) Notwithstanding anything contained in the Code or any other law, every offence punishable under this Act shall be deemed to be a cognizable offence within the meaning of clause (c) of section 2 of the Code, and "cognizable case" as defined in that clause shall be construed accordingly.

(2) Section 167 of the Code shall apply in relation to a case involving an offence punishable under this Act subject to the modification that in sub-section (2),—

(a) the references to "fifteen days", "ninety days" and "sixty days", wherever they occur, shall be construed as references to "thirty days", "ninety days" and "ninety days", respectively; and

(b) after the proviso, the following provisos shall be inserted, namely:—

"Provided further that if it is not possible to complete the investigation within the said period of ninety days, the Special Court shall extend the said period up to one hundred and eighty days, on the report of the Public Prosecutor indicating the progress of the investigation and the specific reasons for the detention of the accused beyond the said period of ninety days:

Provided also that if the police officer making the investigation under this Act, requests, for the purposes of investigation, for police custody from judicial custody of any person from judicial custody, he shall file an affidavit stating the reasons for doing so and shall also explain the delay, if any, for requesting such police custody."

(3) Section 268 of the Code shall apply in relation to a case involving an offence punishable under this Act subject to the modification that—

(a) the reference in sub-section (1) thereof—

(i) to "the State Government" shall be construed as a reference to "the Central Government or the State Government",

(ii) to "order of the State Government" shall be construed as a reference to "order of the Central Government or the State Government, as the case may be"; and

(b) the reference in sub-section (2) thereof, to "the State Government" shall be construed as a reference to "the Central Government or the State Government, as the case may be".

(4) Sections 366, 367 and 371 of the Code shall apply in relation to a case involving an offence triable by a Special Court subject to the modification that the reference to "Court of Session", wherever occurring therein, shall be construed as the reference to "Special Court".

(5) Nothing in section 438 of the Code shall apply in relation to any case involving the arrest of any person accused of having committed an offence punishable under this Act.

(6) Notwithstanding anything contained in the Code, no person accused of an offence punishable under this Act shall, if in custody, be released on bail or on his own bond unless the Court gives the Public Prosecutor an opportunity of being heard.

(7) Where the Public Prosecutor opposes the application of the accused to release on bail, no person accused of an offence punishable under this Act or any rule made thereunder shall be released on bail until the Court is satisfied that there are grounds for believing that he is not guilty of committing such offence:

Provided that after the expiry of a period of one year from the date of detention of the accused for an offence under this Act, the provisions of sub-section (6) of this section shall apply.

(8) The restrictions on granting of bail specified in sub-sections (6) and (7) are in addition to the restrictions under the Code or any other law for the time being in force on granting of bail.

(9) Notwithstanding anything contained in sub-sections (6), (7) and (8), no bail shall be granted to a person accused of an offence punishable under this Act, if he is not an Indian citizen and has entered the country unauthorisedly or illegally except in very exceptional circumstances and for reasons to be recorded in writing.

50. No court shall take cognizance of any offence under this Act without the previous sanction of the Central Government or, as the case may be, the State Government.

Cognizance of offences.

51. Notwithstanding anything contained in the Code, no police officer,—

Officers competent to investigate offences under this Act.

(a) in the case of the Delhi Special Police Establishment, below the rank of a Deputy Superintendent of Police or a police officer of equivalent rank;

(b) in the metropolitan areas of Mumbai, Kolkata, Chennai and Ahmedabad and any other metropolitan area notified as such under sub-section (1) of section 8 of the Code, below the rank of an Assistant Commissioner of Police;

(c) in any other case not relatable to clause (a) or clause (b), below the rank of a Deputy Superintendent of Police or a police officer of an equivalent rank,

shall investigate any offence punishable under this Act.

52. (1) Where a police officer arrests a person, he shall prepare a custody memo of the person arrested.

Arrest.

(2) The person arrested shall be informed of his right to consult a legal practitioner as soon as he is brought to the police station.

(3) Whenever any person is arrested, information of his arrest shall be immediately communicated by the police officer to a family member or in his absence to a relative of such person by telegram, telephone or by any other means and this fact shall be recorded by the police officer under the signature of the person arrested.

(4) The person arrested shall be permitted to meet the legal practitioner representing him during the course of interrogation of the accused person:

Provided that nothing in this sub-section shall entitle the legal practitioner to remain present throughout the period of interrogation.

53. (1) In a prosecution for an offence under sub-section (1) of section 3, if it is proved—

Presumption as to offences under section 3.

(a) that the arms or explosives or any other substances specified in section 4 were recovered from the possession of the accused and there is reason to believe that such arms or explosives or other substances of a similar nature, were used in the commission of such offence; or

(b) that the finger-prints of the accused were found at the site of the offence or on anything including arms and vehicles used in connection with the commission of such offence,

the Special Court shall draw adverse inference against the accused.

(2) In a prosecution for an offence under sub-section (3) of section 3, if it is proved that the accused rendered any financial assistance to a person, having knowledge that such person is accused of, or reasonably suspected of, an offence under that section, the Special Court shall draw adverse inference against the accused.

Bar of jurisdiction of courts, etc.

54. No civil court or other authority shall have or, be entitled to, exercise any jurisdiction, powers or authority in relation to the matters referred to in sections 19 and 40 of the Act.

Saving.

55. (1) Nothing in this Act shall affect the jurisdiction exercisable by, or the procedure applicable to, any court or other authority under any law relating to the naval, military or air forces or other armed forces of the Union.

(2) For the removal of doubts, it is hereby declared that for the purposes of any such law as is referred to in sub-section (1), a Special Court shall be deemed to be a court of ordinary criminal justice.

Overriding effect.

56. The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument having effect by virtue of any enactment other than this Act.

Protection of action taken in good faith.

57. No suit, prosecution or other legal proceeding shall lie against the Central Government or a State Government or any officer or authority of the Central Government or State Government or any other authority on whom powers have been conferred under this Act, for anything which is in good faith done or purported to be done in pursuance of this Act:

Provided that no suit, prosecution or other legal proceedings shall lie against any serving member or retired member of the armed forces or other para-military forces in respect of any action taken or purported to be taken by him in good faith, in the course of any operation directed towards combating terrorism.

Punishment and compensation for malicious action.

58. (1) Any police officer who exercises powers corruptly or maliciously, knowing that there are no reasonable grounds for proceeding under this Act, shall be punishable with imprisonment which may extend to two years, or with fine, or with both.

(2) If the Special Court is of the opinion that any person has been corruptly or maliciously proceeded against under this Act, the Court may award such compensation as it deems fit to the person, so proceeded against and it shall be paid by the officer, person, authority or Government, as may be specified in the order.

Impounding of passport and arms licence of person charge-sheeted under the Act.

59. Notwithstanding anything contained in any other law for the time being in force, the passport and the arms licence of a person, who is charge-sheeted for having committed any offence under this Act, shall be deemed to have been impounded for such period as the Special Court may deem fit.

Review Committees.

60. (1) The Central Government and each State Government shall, whenever necessary, constitute one or more Review Committees for the purposes of this Act.

(2) Every such Committee shall consist of a Chairperson and such other members not exceeding three and possessing such qualifications as may be prescribed.

(3) A Chairperson of the Committee shall be a person who is, or has been, a Judge of a High Court, who shall be appointed by the Central Government, or as the case may be, the State Government, so however, that the concurrence of the Chief Justice of the High Court shall be obtained in the case of a sitting Judge:

Provided that in the case of a Union territory, the appointment of a person who is a Judge of the High Court of a State shall be made as a Chairperson with the concurrence of the Chief Justice of the concerned High Court.

61. The High Court may, by notification in the Official Gazette, make such rules, if any, as they may deem necessary for carrying out the provisions of this Act relating to Special Courts within their territories. Power of High Courts to make rules.

62. (1) Without prejudice to the powers of the High Courts to make rules under section 61, the Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act. Power to make rules.

(2) In particular, and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely:—

(a) regulating the conduct of persons in respect of areas the control of which is considered necessary or expedient and the removal of such persons from such areas;

(b) the entry into, and search of—

(i) any vehicle, vessel or aircraft; or

(ii) any place, whatsoever,

reasonably suspected of being used for committing the offences referred to in section 3 or section 4 or for manufacturing or storing anything for the commission of any such offence;

(c) conferring powers upon—

(i) the Central Government;

(ii) a State Government;

(iii) an Administrator of a Union territory under article 239 of the Constitution;

(iv) an officer of the Central Government not lower in rank than that of a Joint Secretary; or

(v) an officer of a State Government not lower in rank than that of a District Magistrate,

to make general or special orders to prevent or deal with terrorist acts;

(d) the arrest and trial of persons contravening any of the rules or any order made thereunder;

(e) the punishment of any person who contravenes or attempts to contravene or abets or attempts to abet the contravention of any rule or order made thereunder with imprisonment for a term which may extend to one year or fine or both;

(f) providing for the seizure and detention of any property in respect of which such contravention, attempt or abetment as is referred to in clause (e) has been committed and for the adjudication of such seizure and detention, whether by any court or by any other authority;

(g) determination of the price of the forfeited property under sub-section (2) of section 10;

(h) the procedure of making application under sub-section (3) of section 19; and

(i) the qualifications of the members of the Review Committee under sub-section (2) of section 60.

Orders and
rules to be laid
before Houses
of Parlia-
ment.

63. Every order and every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the order or rule or both Houses agree that the order or rule should not be made, the order or rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that order or rule.

Repeal and
saving.

64. (1) The Prevention of Terrorism (Second) Ordinance, 2001 is hereby repealed.

Ord.
12 of 2001.

(2) Notwithstanding the repeal of the said Ordinance, anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under the corresponding provisions of this Act.

THE SCHEDULE

(See section 18)

TERRORIST ORGANISATIONS

1. BABBAR KHALSA INTERNATIONAL.
2. KHALISTAN COMMANDO FORCE.
3. KHALISTAN ZINDABAD FORCE.
4. INTERNATIONAL SIKH YOUTH FEDERATION.
5. LASHKAR-E-TAIBA/PASBAN-E-AHLE HADIS.
6. JAISH-E-MOHAMMED/TAHRIK-E-FURQAN.
7. HARKAT-UL-MUJAHIDEEN/HARKAT-UL-ANSAR/KARKAT-UL-JEHAD-E-ISLAMI.
8. HIZB-UL-MUJAHIDEEN/HIZB-UL-MUJAHIDEEN PIR PANJAL REGIMENT.
9. AL-UMAR-MUJAHIDEEN.
10. JAMMU AND KASHMIR ISLAMIC FRONT.
11. UNITED LIBERATION FRONT OF ASSAM (ULFA).
12. NATIONAL DEMOCRATIC FRONT OF BODOLAND (NDFB).
13. PEOPLE'S LIBERATION ARMY (PLA).
14. UNITED NATIONAL LIBERATION FRONT (UNLF).
15. PEOPLE'S REVOLUTIONARY PARTY OF KANGLEIPAK (PREPAK).
16. KANGLEIPAK COMMUNIST PARTY (KCP).
17. KANGLEIYAOL KANBALUP (KYKL).
18. MANIPUR PEOPLE'S LIBERATION FRONT (MPLF).
19. ALL TRIPURA TIGER FORCE.
20. NATIONAL LIBERATION FRONT OF TRIPURA.
21. LIBERATION TIGERS OF TAMIL EELAM (LTTE).
22. STUDENTS ISLAMIC MOVEMENT OF INDIA.
23. DEENDAR ANJUMAN.
24. COMMUNIST PARTY OF INDIA (MARXIST-LENINIST)—PEOPLE'S WAR, ALL ITS FORMATIONS AND FRONT ORGANISATIONS.
25. MAOIST COMMUNIST CENTRE (MCC), ALL ITS FORMATIONS AND FRONT ORGANISATIONS.

Explanation.—For the purposes of this Schedule, serial numbers 24 and 25 shall be deemed to have been included with effect from the date of publication of S.O. No. 1194(E), dated the 5th December, 2001.

Sd/-

Dr. SUBHASH C. JAIN,

Secretary to the Government of India.

By order and in the name of the Governor of Gujarat,

V. M. KOTHARE,

Secretary to Government.

GOVERNMENT CENTRAL PRESS, GANDHINAGAR



सत्यमेव जयते

The Gujarat Government Gazette EXTRAORDINARY

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Separate paging is given to this Part in order that it may be filed as a Separate Compilation.

PART - VI

Acts of Parliament and Ordinances Promulgated by the President
LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT

Sachivalaya, Gandhinagar, 21st November, 2002.

No. : RPB/56/2002/ACT-3702/E The following Act of Parliament is republished for general information :-

GOVERNMENT OF INDIA

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS,

(Legislative Department),

New Delhi, the 12th June, 2002/Jyastha 22, 1924 (Saka)

The following Act of Parliament received the assent of the President on the 11th June, 2002 and is hereby published for general information :-

THE LEGAL SERVICES AUTHORITIES (AMENDMENT) ACT, 2002.

AN ACT

(Act No. 37 of 2002)

(11th June, 2002)

further to amend the Legal Services Authorities Act, 1987.

Be it enacted by Parliament in the Fifty-third Year of the Republic of India as follows:—

- | | | |
|-------------|--|-------------------------------|
| 39 of 1987. | 1. This Act may be called the Legal Services Authorities (Amendment) Act, 2002. | Short title. |
| | 2. In the Legal Services Authorities Act, 1987 (hereinafter referred to as the principal Act), in section 11A, in sub-section (2), in clause (a), for the words "senior Civil Judge", the words "senior-most Judicial Officer" shall be substituted. | Amendment of section 11A. |
| | 3. In section 22 of the principal Act, for the words "Lok Adalat", wherever they occur, the words "Lok Adalat or Permanent Lok Adalat" shall be substituted. | Amendment of section 22. |
| | 4. After Chapter VI of the principal Act, the following Chapter shall be inserted, namely:— | Insertion of new Chapter VIA. |

CHAPTER VIA

PRE-LITIGATION CONCILIATION AND SETTLEMENT

22A. In this Chapter and for the purposes of sections 22 and 23, unless the context otherwise requires,—

(a) "Permanent Lok Adalat" means a Permanent Lok Adalat established under sub-section (1) of section 22B;

(b) "public utility service" means any—

- (i) transport service for the carriage of passengers or goods by air, road or water; or
- (ii) postal, telegraph or telephone service; or
- (iii) supply of power, light or water to the public by any establishment; or
- (iv) system of public conservancy or sanitation; or
- (v) service in hospital or dispensary; or
- (vi) insurance service,

and includes any service which the Central Government or the State Government, as the case may be, may, in the public interest, by notification, declare to be a public utility service for the purposes of this Chapter.

Establishment
of Permanent
Lok Adalats.

22B. (1) Notwithstanding anything contained in section 19, the Central Authority or, as the case may be, every State Authority shall, by notification, establish Permanent Lok Adalats at such places and for exercising such jurisdiction in respect of one or more public utility services and for such areas as may be specified in the notification.

(2) Every Permanent Lok Adalat established for an area notified under sub-section (1) shall consist of—

(a) a person who is, or has been, a district judge or additional district judge or has held judicial office higher in rank than that of a district judge, shall be the Chairman of the Permanent Lok Adalat; and

(b) two other persons having adequate experience in public utility service to be nominated by the Central Government or, as the case may be, the State Government on the recommendation of the Central Authority or, as the case may be, the State Authority,

appointed by the Central Authority or, as the case may be, the State Authority, establishing such Permanent Lok Adalat and the other terms and conditions of the appointment of the Chairman and other persons referred to in clause (b) shall be such as may be prescribed by the Central Government.

Cognizance of
cases by
Permanent
Lok Adalat.

22C. (1) Any party to a dispute may, before the dispute is brought before any court, make an application to the Permanent Lok Adalat for the settlement of dispute:

Provided that the Permanent Lok Adalat shall not have jurisdiction in respect of any matter relating to an offence not compoundable under any law:

Provided further that the Permanent Lok Adalat shall also not have jurisdiction in the matter where the value of the property in dispute exceeds ten lakh rupees:

Provided also that the Central Government may, by notification, increase the limit of ten lakh rupees specified in the second proviso in consultation with the Central Authority.

(2) After an application is made under sub-section (1) to the Permanent Lok Adalat, no party to that application shall invoke jurisdiction of any court in the same dispute.

(3) Where an application is made to a Permanent Lok Adalat under sub-section (1), it—

(a) shall direct each party to the application to file before it a written statement, stating therein the facts and nature of dispute under the application, points or issues in such dispute and grounds relied in support of, or in opposition to, such points or issues, as the case may be, and such party may supplement such statement with any document and other evidence which such party

deems appropriate in proof of such facts and grounds and shall send a copy of such statement together with a copy of such document and other evidence, if any, to each of the parties to the application;

(b) may require any party to the application to file additional statement before it at any stage of the conciliation proceedings;

(c) shall communicate any document or statement received by it from any party to the application to the other party, to enable such other party to present reply thereto.

(4) When statement, additional statement and reply, if any, have been filed under sub-section (3), to the satisfaction of the Permanent Lok Adalat, it shall conduct conciliation proceedings between the parties to the application in such manner as it thinks appropriate taking into account the circumstances of the dispute.

(5) The Permanent Lok Adalat shall, during conduct of conciliation proceedings under sub-section (4), assist the parties in their attempt to reach an amicable settlement of the dispute in an independent and impartial manner.

(6) It shall be the duty of every party to the application to cooperate in good faith with the Permanent Lok Adalat in conciliation of the dispute relating to the application and to comply with the direction of the Permanent Lok Adalat to produce evidence and other related documents before it.

(7) When a Permanent Lok Adalat, in the aforesaid conciliation proceedings, is of opinion that there exist elements of settlement in such proceedings which may be acceptable to the parties, it may formulate the terms of a possible settlement of the dispute and give to the parties concerned for their observations and in case the parties reach at an agreement on the settlement of the dispute, they shall sign the settlement agreement and the Permanent Lok Adalat shall pass an award in terms thereof and furnish a copy of the same to each of the parties concerned.

(8) Where the parties fail to reach at an agreement under sub-section (7), the Permanent Lok Adalat shall, if the dispute does not relate to any offence, decide the dispute.

22D. The Permanent Lok Adalat shall, while conducting conciliation proceedings or deciding a dispute on merit under this Act, be guided by the principles of natural justice, objectivity, fair play, equity and other principles of justice, and shall not be bound by the Code of Civil Procedure, 1908 and the Indian Evidence Act, 1872.

Procedure of
Permanent
Lok Adalat.

22E. (1) Every award of the Permanent Lok Adalat under this Act made either on merit or in terms of a settlement agreement shall be final and binding on all the parties thereto and on persons claiming under them.

Award of
Permanent
Lok Adalat to
be final.

(2) Every award of the Permanent Lok Adalat under this Act shall be deemed to be a decree of a civil court.

(3) The award made by the Permanent Lok Adalat under this Act shall be by a majority of the persons constituting the Permanent Lok Adalat.

(4) Every award made by the Permanent Lok Adalat under this Act shall be final and shall not be called in question in any original suit, application or execution proceeding.

(5) The Permanent Lok Adalat may transmit any award made by it to a civil court having local jurisdiction and such civil court shall execute the order as if it were a decree made by that court.

Amendment of section 23. 5. In section 23 of the principal Act, for the words "members of the Lok Adalats", the words "members of the Lok Adalats or the persons constituting Permanent Lok Adalats" shall be substituted.

Amendment of section 27. 6. In section 27 of the principal Act, in sub-section (2), after clause (I), the following clause shall be inserted, namely:—

"(Ia) the other terms and conditions of appointment of the Chairman and other persons under sub-section (2) of section 22B;"

Sd/-

Dr. SUBHASH C. JAIN,

Secretary to the Government of India.

By order and in the name of the Governor of Gujarat,

V. M. KOTHARE,

Secretary to Government.

Government Central Press, Gandhinagar.



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PART - VI

Acts of Parliament and Ordinances Promulgated by the President

LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT

Sachivalaya, Gandhinagar, 21st November, 2002.

No. : RPB/58/2002/ACT-3902/E : The following Act of Parliament is republished for general information:-

GOVERNMENT OF INDIA

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS,
(Legislative Department),

New Delhi, the 3rd July, 2002/Asadha 12, 1924 (Saka)

The following Act of Parliament received the assent of the President on the 3rd July, 2002 and is hereby published for general information :-

THE MULTI-STATE CO-OPERATIVE SOCIETIES ACT, 2002.

AN ACT

(Act No. 39 of 2002)

(3rd July, 2002)

to consolidate and amend the law relating to co-operative societies, with objects not confined to one State and serving the interests of members in more than one State, to facilitate the voluntary formation and democratic functioning of co-operatives as people's institutions based on self-help and mutual aid and to enable them to promote their economic and social betterment and to provide functional autonomy and for matters connected therewith or incidental thereto.

Be it enacted by Parliament in the Fifty-third Year of the Republic of India as follows:--

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Multi-State Co-operative Societies Act, 2002.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

2. This Act shall apply to—

(a) all co-operative societies, with objects not confined to one State which were incorporated before the commencement of this Act,—

(i) under the Co-operative Societies Act, 1912, or

(ii) under any other law relating to co-operative societies in force in any State or in pursuance of the Multi-unit Co-operative Societies Act, 1942 or the Multi-State Co-operative Societies Act, 1984,

and the registration of which has not been cancelled before such commencement; and

(b) all multi-State co-operative societies.

Short title,
extent and
commencement.

Application.

2 of 1912.

6 of 1942.
51 of 1984.

Definitions.

3. In this Act, unless the context otherwise requires,—

(a) "area of operation" means the area from which the persons are admitted as members;

(b) "board" means the board of directors or the governing body of a multi-State co-operative society, by whatever name called, to which the direction and control of the management of the affairs of the society is entrusted;

(c) "bye-laws" means the bye-laws for the time being in force which have been duly registered or deemed to have been registered under this Act and includes amendments thereto which have been duly registered or deemed to have been registered under this Act;

(d) "Central Registrar" means the Central Registrar of Co-operative Societies appointed under sub-section (1) of section 4 and includes any officer empowered to exercise the powers of the Central Registrar under sub-section (2) of that section;

(e) "Chief Executive" means a Chief Executive of a multi-State co-operative society appointed under section 51;

(f) "co-operative bank" means a multi-State co-operative society which undertakes banking business;

(g) "co-operative principles" means the co-operative principles specified in the First Schedule;

(h) "co-operative society" means a society registered or deemed to be registered under any law relating to co-operative societies for the time being in force in any State;

(i) "co-operative year", in relation to any multi-State co-operative society or class of such societies, means the year ending on the 31st day of March of the year and where the accounts of such society or class of such societies are, with the previous sanction of the Central Registrar, balanced on any other day, the year ending on such day;

(j) "Deposit Insurance Corporation" means the Deposit Insurance and Credit Guarantee Corporation established under section 3 of the Deposit Insurance Corporation Act, 1961;

47 of 1961.

(k) "federal co-operative" means a federation of co-operative societies registered under this Act and whose membership is available only to a co-operative society or a multi-State co-operative society;

(l) "general body", in relation to a multi-State co-operative society, means all the members of that society and in relation to a national co-operative society or a federal co-operative means all the delegates of member co-operative societies or delegates of multi-State co-operative societies and includes a body constituted under the first proviso to sub-section (1) of section 38;

(m) "general meeting" means a meeting of the general body of a multi-State co-operative society and includes special general meeting;

(n) "member" means a person joining in the application for the registration of a multi-State co-operative society and includes a person admitted to membership after such registration in accordance with the provisions of this Act, the rules and the bye-laws;

Application
for
registration.

6. (1) For the purposes of registration of a multi-State co-operative society under this Act, an application shall be made to the Central Registrar in such form and with such particulars as may be prescribed.

(2) The application shall be signed,—

(a) in the case of a multi-State co-operative society of which all the members are individuals, by at least fifty persons from each of the State concerned;

(b) in the case of a multi-State co-operative society of which the members are co-operative societies, by duly authorised representatives on behalf of at least five such societies as are not registered in the same State; and

(c) in the case of a multi-State co-operative society of which another multi-State co-operative society and other co-operative societies are members, by duly authorised representatives of each of such societies:

Provided that not less than two of the co-operative societies referred to in this clause, shall be such as are not registered in the same State;

(d) in the case of a multi-State co-operative society of which the members are co-operative societies or multi-State co-operative societies and individuals, by at least—

(i) fifty persons, being individuals, from each of the two States or more; and

(ii) one co-operative society each from two States or more or one multi-State co-operative society.

(3) The application shall be accompanied by four copies of the proposed bye-laws of the multi-State co-operative society and the persons by whom or on whose behalf such application is made shall furnish such information in regard to the society as the Central Registrar may require.

Registration.

7. (1) If the Central Registrar is satisfied—

(a) that the application complies with the provisions of this Act and the rules;

(b) that the proposed multi-State co-operative society satisfies the basic criterion that its objects are to serve the interests of members in more than one State;

(c) that its bye-laws provide for social and economic betterment of its members through self-help and mutual aid in accordance with the co-operative principles;

(d) that the proposed bye-laws are not contrary to the provisions of this Act and the rules,

he may register the multi-State co-operative society and its bye-laws.

(2) The application for registration shall be disposed of by the Central Registrar within a period of four months from the date of receipt thereof by him.

(3) Where the Central Registrar refuses to register a multi-State co-operative society, he shall communicate, within a period of four months from the date of receipt of the application for registration, the order of refusal together with the reasons therefor to the applicant or applicants, as the case may be:

Provided that no order of refusal shall be made unless the applicants have been given a reasonable opportunity of being heard:

Provided further that if the application for registration is not disposed of within a period of four months specified in sub-section (2) or the Central Registrar fails to communicate the order of refusal within that period, the application shall be deemed to

have been accepted for registration and the Central Registrar shall issue the registration certificate in accordance with the provisions of this Act and the rules made thereunder.

8. Where a multi-State co-operative society is registered under this Act, the Central Registrar shall issue a certificate of registration signed by him, which shall be conclusive evidence that the society therein mentioned is duly registered under this Act, unless it is proved that the registration of the society has been cancelled.

Registration certificate.

9. (1) The registration of a multi-State co-operative society shall render it a body corporate by the name under which it is registered having perpetual succession and a common seal, and with power to acquire, hold and dispose of property, both movable and immovable, enter into contract, institute and defend suits and other legal proceedings and to do all things necessary for the purpose for which it is constituted, and shall, by the said name, sue or be sued.

Multi-State co-operative society to be body corporate.

(2) All transactions entered into in good faith prior to the registration of a multi-State co-operative society shall be deemed to be its transactions after registration for furtherance of the objects of its registration.

10. (1) Every multi-State co-operative society may make its bye-laws consistent with the provisions of this Act and the rules made thereunder.

Bye-laws of multi-State co-operative societies.

(2) In particular, and without prejudice to the generality of the foregoing power, such bye-laws may provide for all or any of the following matters, namely:—

- (a) the name, address and area of operation of the society;
- (b) the objects of the society;
- (c) the services to be provided to its members;
- (d) the eligibility for obtaining membership;
- (e) the procedure for obtaining membership;
- (f) the conditions for continuing as member;
- (g) the procedure for withdrawal of membership;
- (h) the transfer of membership;
- (i) the procedure for expulsion from membership;
- (j) the rights and duties of the members;
- (k) the nature and amount of capital of the society;
- (l) the manner in which the maximum capital to which a single member can subscribe;
- (m) the sources from which the funds may be raised by the multi-State co-operative society;
- (n) the purpose for which the funds may be applied;
- (o) the manner of allocation or disbursement of net profits of the multi-State co-operative society;
- (p) the constitution of various reserves;
- (q) the manner of convening general meetings and quorum thereof other than those provided under this Act;
- (r) the procedure for notice and manner of voting, in general and other meetings;
- (s) the procedure for amending the bye-laws;
- (t) the number of members of the board not exceeding twenty-one;
- (u) the tenure of directors, chairperson and other office-bearers of the society, not exceeding five years;
- (v) the procedure for removal of members of the board and for filling up of vacancies;

(w) the manner of convening board meetings, its quorum, number of such meetings in a year and venue of such meetings;

(x) the frequency of board meetings;

(y) the powers and functions of the Chief Executive in addition to those provided under section 52;

(z) the manner of imposing the penalty;

(za) the appointment, rights and duties of auditors and procedure for conduct of audit;

(zb) the authorisation of officers to sign documents and to institute and defend suits and other legal proceedings on behalf of the society;

(zc) the terms on which a multi-State co-operative society may deal with persons other than members;

(zd) the terms on which a multi-State co-operative society may associate with other co-operatives societies;

(ze) the terms on which a multi-State co-operative society may deal with organisations other than co-operative societies;

(zf) the rights, if any, which the multi-State co-operative society may confer on any other multi-State co-operative society or federal co-operative and the circumstances under which such rights may be exercised by the federal co-operative;

(zg) the procedure and manner for transfer of shares and interest in the name of a nominee in case of death of a member;

(zh) the educational and training programmes to be conducted by the multi-State co-operative society;

(zi) the principal place and other places of business of multi-State co-operative society;

(zj) the minimum level of services to be used by its members;

(zk) any other matter which may be prescribed.

Amendment
of bye-laws of
a multi-State
co-operative
society.

11. (1) No amendment of any bye-law of a multi-State co-operative society shall be valid, unless such amendment has been registered under this Act.

(2) The amendment to the bye-laws of a multi-State co-operative society shall be made by a resolution passed by a two-third majority of the members present and voting at general meeting of the society.

(3) No such resolution shall be valid unless fifteen clear days' notice of the proposed amendment has been given to the members.

(4) In every case in which a multi-State co-operative society proposes to amend its bye-laws, an application to register such amendments shall be made to the Central Registrar together with—

(a) a copy of the resolution referred to in sub-section (2);

(b) a statement containing the particulars indicating—

(i) the date of the general meeting at which the amendments to the bye-laws were made;

(ii) the number of days' notice given to convene the general meeting;

(iii) the total number of members of the multi-State co-operative society;

(iv) the quorum required for such meeting;

(v) the number of members present at the meeting;

- (vi) the number of members who voted in such meeting;
- (vii) the number of members who voted in favour of such amendments to bye-laws;
- (c) a copy of the relevant bye-laws in force with the amendment proposed to be made together with reasons justifying such amendments;
- (d) four copies of the text of the bye-laws incorporating therein the proposed amendments signed by the officer duly authorised in this behalf by the general body;
- (e) a copy of the notice given to the members and the proposal to amend the bye-laws;
- (f) a certificate signed by the person who presided at the general meeting certifying that the procedure specified in sub-sections (2) and (3) and the bye-laws had been followed;
- (g) any other particular which may be required by the Central Registrar in this behalf.

(5) Every such application shall be made within sixty days from the date of the general meeting at which such amendment to the bye-laws was passed.

(6) The procedure given in sub-sections (2) to (5) of this section shall apply to the amendment of the bye-laws of a co-operative society desiring to convert itself into a multi-State co-operative society as per the provisions of section 22.

(7) If, on receipt of application under sub-section (5), the Central Registrar is satisfied that the proposed amendment—

- (a) is not contrary to the provisions of this Act or of the rules;
- (b) does not conflict with co-operative principles; and
- (c) will promote the economic interests of the members of the multi-State co-operative society,

he may register the amendment within a period of three months from the date of receipt thereof by him.

(8) The Central Registrar shall forward to the multi-State co-operative society a copy of the registered amendment together with a certificate signed by him within a period of one month from the date of registration thereof and such certificate shall be conclusive evidence that the amendment has been duly registered.

(9) Where the Central Registrar refuses to register an amendment of the bye-laws of a multi-State co-operative society, he shall communicate the order of refusal together with the reasons therefor to the Chief Executive of the society in the manner prescribed within fifteen days from the date of such refusal:

Provided that if the application for registration is not disposed of within a period of three months specified in sub-section (7) or the Central Registrar fails to communicate the order of refusal within that period, the application shall be deemed to have been accepted for registration and the Central Registrar shall issue registration certificate in accordance with the provisions of this Act.

12. An amendment of the bye-laws of a multi-State co-operative society shall, unless it is expressed to come into operation on a particular day, come into force on the day on which it is registered.

When amendment of bye-laws comes into force.

13. (1) A multi-State co-operative society may, by an amendment of its bye-laws, change its name but such change shall not affect any right or obligation of the multi-State co-operative society or of any of its members or past members, and any legal proceedings which might have been continued or commenced by or against the multi-State co-operative society by its former name, may be continued or commenced by or against its new name.

Change of name.

(2) Where a multi-State co-operative society changes its name, the Central Registrar shall enter the new name on the register of multi-State co-operative society in place of the former name and shall amend the certificate of registration accordingly.

Change of
address.

14. Every multi-State co-operative society shall have a principal place of business and an address registered in the manner prescribed to which all notices and communications may be sent.

Publication of
name by
multi-State co-
operative
society.

15. Every multi-State co-operative society—

(a) shall paint or affix its name and the address of its registered office and keep the same painted or affixed, on the outside of every office or place in which its business is carried on, in conspicuous position, in letters easily legible; and if the characters employed therefor are not those of the language, or of one of the languages in general use in that locality, also in the characters of that language or of one of those languages;

(b) shall have its name engraved in legible characters on its seal; and

(c) shall have its name and the address of its registered office mentioned in legible characters in all its business letters, in all its bill heads and letter paper, and in all its notices and other official publications; and also have its name so mentioned in all bills of exchange, hundies, promissory notes, endorsements, cheques and orders for money or goods purporting to be signed by or on behalf of the multi-State co-operative society, and in all bills of parcels, invoices, receipts and letters of credit of the multi-State co-operative society.

Liability.

16. (1) No multi-State co-operative society with unlimited liability shall be registered after the commencement of this Act:

Provided that where a multi-State co-operative society with unlimited liability was functioning before the commencement of this Act, such a society shall exercise the option within a period of one year from such commencement either to continue to function as such or to convert itself into a multi-State co-operative society with limited liability by following the procedure specified in sub-sections (2) to (4).

(2) Subject to the provisions of this Act and the rules, a multi-State co-operative society may, by an amendment of its bye-laws, change the extent of its liability.

(3) When a multi-State co-operative society has passed a resolution to change the extent of its liability, it shall give notice thereof in writing to all its members and creditors, and, notwithstanding anything contained in the bye-laws or contract to the contrary, any member or creditor shall, during the period of one month from the date of service of the notice upon him, have the option of withdrawing his shares, deposits or loans, as the case may be.

(4) Any member or creditor who does not exercise his option within the period specified in sub-section (3) shall be deemed to have assented to the change.

(5) An amendment of a bye-law of a multi-State co-operative society changing the extent of its liability shall not be registered or shall not take effect until either—

(a) the assent thereto of all members and creditors has been obtained; or

(b) all claims of members and creditors who exercise the option referred to in sub-section (3) within the period specified therein have been met in full or otherwise satisfied.

Amalgamation
or transfer of
assets and
liabilities, or
division of
multi-State
co-operative
societies.

17. (1) A multi-State co-operative society may, by a resolution passed by a majority of not less than two-thirds of the members, present and voting at a general meeting of the society held for the purpose,—

(a) transfer its assets and liabilities in whole or in part to any other multi-State co-operative society or co-operative society;

(b) divide itself into two or more multi-State co-operative societies;

(c) divide itself into two or more co-operative societies.

(2) Any two or more multi-State co-operative societies may, by a resolution passed by a majority of not less than two-thirds of the members present and voting at a general meeting of each such society, amalgamate themselves and form a new multi-State co-operative society.

(3) The resolution of a multi-State co-operative society under sub-section (1) or sub-section (2) shall contain all particulars of the transfer or division or amalgamation, as the case may be.

(4) When a multi-State co-operative society has passed a resolution under sub-section (1) or sub-section (2), it shall give notice thereof in writing to all the members and creditors, and, notwithstanding anything contained in the bye-laws or contract to the contrary, any member or creditor shall, during the period of one month of the date of service of the notice upon him, have the option of withdrawing his shares, deposits or loans, as the case may be.

(5) Any member or creditor who does not exercise his option within the period specified in sub-section (4) shall be deemed to have assented to the proposals contained in the resolution.

(6) (a) A resolution passed by a multi-State co-operative society under this section shall not take effect until the assent thereto of all the members and creditors has been obtained.

(b) The multi-State co-operative society shall make arrangements for meeting in full or otherwise satisfying all claims of the members and creditors who exercise the option within the period specified in sub-section (4).

(7) On receipt of an application for the registration of new societies formed by division in accordance with the resolution passed under sub-section (1) or of a new society formed by amalgamation in accordance with the resolution passed under sub-section (2), the Central Registrar, on being satisfied that the resolution has become effective under sub-section (6) shall, unless for reasons to be recorded in writing he thinks fit to refuse so to do, register the new society or societies, as the case may be, and the bye-laws thereof.

(8) On the issue of an order under sub-section (7), the provisions of section 21 shall, so far as may be, apply to the multi-State co-operative society so divided or the multi-State co-operative societies so amalgamated.

(9) Where a resolution passed by a multi-State co-operative society under this section involves the transfer of any assets and liabilities, the resolution shall, notwithstanding anything contained in any other law for the time being in force, be a sufficient conveyance to vest the assets and liabilities in the transferee without any further assurance.

10 of 1949.

18. When an order of moratorium has been made by the Central Government under sub-section (2) of section 45 of the Banking Regulation Act, 1949 in respect of a co-operative bank, the Central Registrar, with the previous approval of the Reserve Bank in writing, may, during the period of moratorium, prepare a scheme—

(a) for the amalgamation of the co-operative bank with any other co-operative bank; or

(b) for the reorganisation of the co-operative bank.

19. (1) Any multi-State co-operative society may, by a resolution passed at general meeting by a majority of members present and voting, promote one or more subsidiary institutions, which may be registered under any law for the time being in force, for the furtherance of its stated objects.

Central Registrar to prepare scheme of amalgamation or reorganisation of a co-operative bank in certain cases.

Promotion of subsidiary institution.

(2) Any subsidiary institution promoted under sub-section (1) shall exist only as long as general body of the multi-State co-operative society deems its existence necessary:

Provided that a multi-State co-operative society, while promoting such a subsidiary institution, shall not transfer or assign its substantive part of business or activities undertaken in furtherance of its stated objects.

Explanation.—For the purposes of this section,—

(a) an institution shall be deemed to be a subsidiary institution if the multi-State co-operative society—

(i) controls the management or board of directors or members of governing body of such institution; or

(ii) holds more than half in nominal value of equity shares of such institutions; or

(iii) if one or more members of such multi-State co-operative society, hold whether by themselves or together with subsidiary institution or their relatives, as the case may be, the majority of equity shares in that institution;

(b) a subsidiary institution shall not include a partnership firm.

(3) The annual reports and accounts of any such subsidiary institution shall be placed each year before general meeting of the promoting multi-State co-operative society.

Liability of a
co-operative
bank to
Deposit
Insurance and
Credit
Guarantee
Corporation.

20. Notwithstanding anything contained in section 17 or any other provision of this Act, where a co-operative bank, being an insured bank within the meaning of the Deposit Insurance and Credit Guarantee Corporation Act, 1961, is amalgamated or reorganised and the Deposit Insurance Corporation has become liable to pay to the depositors of the insured bank under sub-section (2) of section 16 of that Act, the bank with which such insured bank is amalgamated or the new co-operative bank formed after such amalgamation, or, as the case may be, the insured bank or transferee bank shall be under an obligation to repay to the Deposit Insurance Corporation in the circumstances, to the extent and in the manner referred to in section 21 of the Deposit Insurance and Credit Guarantee Corporation Act, 1961.

47 of 1961.

Cancellation
of registration
certificate of
multi-State co-
operative
societies in
certain cases.

21. (1) Where the whole of the assets and liabilities of a multi-State co-operative society are transferred to another multi-State co-operative society or to a co-operative society in accordance with the provisions of section 17, the registration of the first-mentioned multi-State co-operative society shall stand cancelled and the society shall be deemed to have been dissolved and shall cease to exist as a corporate body.

(2) Where two or more multi-State co-operative societies are amalgamated into a new multi-State co-operative society in accordance with the provisions of section 17, the registration of each of the amalgamating societies shall stand cancelled on the registration of the new society, and each of the amalgamating societies shall be deemed to have been dissolved and shall cease to exist as a corporate body.

(3) Where a multi-State co-operative society divides itself into two or more multi-State co-operative societies or two or more co-operative societies in accordance with the provisions of section 17, the registration of that society shall stand cancelled on the registration of the new societies, and that society shall be deemed to have been dissolved and shall cease to exist as a corporate body.

(4) The amalgamation or division of multi-State co-operative societies shall not in any manner whatsoever affect any right or obligation of the resulting multi-State co-operative society or societies or render defective any legal proceedings by or against the multi-State co-operative society or societies, and any legal proceedings that might have been continued or commenced by or against the multi-State co-operative society or societies, as the case may be, before the amalgamation or division, may be continued or commenced by or against the resulting multi-State co-operative society or societies.

22. (1) A co-operative society may, by an amendment of its bye-laws, extend its jurisdiction and convert itself into a multi-State co-operative society:

Conversion of a co-operative society into a multi-State co-operative society.

Provided that no such amendment of bye-laws of a co-operative society shall be valid unless it has been registered by the Central Registrar.

(2) (a) Every proposal for such amendment of bye-laws shall be forwarded to the Central Registrar in accordance with the provisions contained in sub-section (4) of section 11.

(b) If the Central Registrar, after consulting the Registrars of Co-operative Societies of the States concerned, has satisfied himself that such amendment—

(i) fulfils the requirements of the members being from more than one State;

(ii) is in accordance with the provisions contained in sub-section (4) of section 11,

he may register the amendment within a period of six months from the date of receipt thereof by him:

Provided that no co-operative society shall be deemed to have been converted into a multi-State co-operative society on any ground whatsoever unless such society is registered as a multi-State co-operative society.

(3) The Central Registrar shall forward to the co-operative society a copy of the registered amendment together with a certificate signed by him and such certificate shall be conclusive evidence that the amendment has been registered.

(4) Where the Central Registrar refuses to register an amendment of the bye-laws of a co-operative society, he shall communicate the order of refusal together with the reasons therefor to the society in the manner prescribed within seven days from the date of refusal.

(5) (a) Once the amendment of bye-laws has been registered by the Central Registrar, the co-operative society shall, as from the date of registration of amendment, become a multi-State co-operative society.

(b) The Central Registrar shall forward to the co-operative society a certificate signed by him to the effect that such society has been registered as a multi-State co-operative society under this Act and also forward a copy of the same to the Registrar of Co-operative Societies of the State concerned.

(c) The Registrar of Co-operative Societies referred to in clause (b) shall thereupon make an order directing that the society had, as from the date of registration by the Central Registrar, ceased to be a society under the law relating to co-operative societies in force in that State.

CHAPTER III

REGISTRATION AND FUNCTIONS OF FEDERAL CO-OPERATIVES

23. (1) Every federal co-operative shall obtain registration certificate in accordance with the provisions of this Act.

Registration of federal co-operative.

(2) Every federal co-operative shall in its general meeting be represented by its member co-operative.

(3) The classification of federal co-operative and other terms and conditions applicable to it shall be such as may be prescribed.

(4) All provisions of this Act, applicable to a multi-State co-operative society shall, as far as may be, apply to a federal co-operative.

24. (1) Subject to the provisions of this Act and any other law for the time being in force, a federal co-operative may discharge the functions to facilitate the voluntary formation and democratic functioning of co-operative societies as federal co-operative or multi-State co-operatives based on self-help and mutual aid.

Functions of federal co-operative.

(2) Without prejudice to the generality of the provisions contained in sub-section (1), the federal co-operative may—

- (a) ensure compliance of the co-operative principles;
- (b) make model bye-laws and policies for consideration of its member co-operative;
- (c) provide specialised training, education and data-base information;
- (d) undertake research, evaluation and assist in preparation of perspective development plans for its member co-operative;
- (e) promote harmonious relations amongst member co-operative;
- (f) help member co-operative to settle disputes among themselves;
- (g) undertake business services on behalf of its member co-operative, if specifically required by or under the resolution of the general body or the board, or bye-laws of a member co-operative;
- (h) provide management development services to a member co-operative;
- (i) evolve code of conduct for observance by a member co-operative;
- (j) evolve viability norms for a member co-operative;
- (k) provide legal aid and advice to a member co-operative;
- (l) assist member co-operative in organising self-help;
- (m) develop market information system, logo brand promotion, quality control and technology upgradation.

CHAPTER IV

MEMBERS OF MULTI-STATE CO-OPERATIVE SOCIETIES AND THEIR DUTIES, RIGHTS AND LIABILITIES

Persons who may become members.

25. (1) No person shall be admitted as a member of a multi-State co-operative society except the following, namely:—

- (a) an individual, competent to contract under section 11 of the Indian Contract Act, 1872; 9 of 1872.
- (b) any multi-State co-operative society or any co-operative society;
- (c) the Central Government;
- (d) a State Government;
- (e) the National Co-operative Development Corporation established under the National Co-operative Development Corporation Act, 1962; 26 of 1962.
- (f) any other corporation owned or controlled by the Government;
- (g) any Government company as defined in section 617 of the Companies Act, 1956; 1 of 1956.
- (h) such class or classes of persons or association of persons as may be permitted by the Central Registrar having regard to the nature and activities of a multi-State co-operative society.

(2) No individual person shall be eligible for admission as a member of a national co-operative society or a federal co-operative.

(3) Any person eligible for membership of a multi-State co-operative society may, on his application, be admitted as a member by such society.

(4) Every application for admission as a member of a multi-State co-operative society shall be disposed of by such society within a period of four months from the date of receipt of the application, and the decision of such society on the application shall be communicated to the applicant within fifteen days from the date of such decision:

Provided that if the application is not disposed of within the period aforesaid, or the decision is not communicated within a period of fifteen days of the expiry of the aforesaid period of four months, the multi-State co-operative society shall be deemed to have made a decision, on the date of expiry of such period, refusing admission to the applicant.

(5) It shall be the duty of every member of a multi-State co-operative society to promote and protect the interests and objects of such society.

26. A multi-State co-operative society may, if provided in its bye-laws, admit a person as nominal or associate member:

Nominal or
associate
member of
society.

Provided that no such nominal or associate member shall be entitled to subscribe the shares of such society or have any interest in the management thereof including right to vote, elect as a director of the board or participate in the general body meetings.

27. (1) Every multi-State co-operative society shall organise co-operative education programmes for its members, directors and employees.

Educational
course for
members.

(2) Every multi-State co-operative society may provide funds for such co-operative education programmes.

28. No member of a multi-State co-operative society shall exercise the rights of a member, unless he has made the payment to the society in respect of membership, or has acquired such interest in the society, as may be specified in the bye-laws.

Members not
to exercise
rights till due
payment
made.

29. No person shall be eligible for being a member of a multi-State co-operative society if—

Disqualification
for member
of a multi-
State
co-operative
society.

(a) his business is in conflict or competitive with the business of such multi-State co-operative society; or

(b) he used for two consecutive years the services below the minimum level specified in the bye-laws; or

(c) he has not attended three consecutive general meetings of the multi-State co-operative society and such absence has not been condoned by the members in the general meeting; or

(d) he has made any default in payment of any amount to be paid to the multi-State co-operative society under the bye-laws of such society.

30. (1) A multi-State co-operative society may, by resolution passed by a majority of not less than two-thirds of the members present and voting at a general meeting of members held for the purpose, expel a member for acts which are detrimental to the proper working of the society:

Expulsion of
members.

Provided that the member concerned shall not be expelled unless he has been given a reasonable opportunity of making representation in the matter.

(2) No member of the multi-State co-operative society who has been expelled under sub-section (1), shall be eligible for re-admission as a member of that society, for a period of one year from the date of such expulsion.

31. Every member of a multi-State co-operative society, including a member who is an employee of such society, shall have one vote in the affairs of the society:

Vote of
members.

Provided that—

(a) a member who is an employee of such society shall not be entitled to vote—

(i) at the election of a member of the board of such society;

(ii) in any general meeting convened for framing the bye-laws of such society or any amendments thereto;

(b) in the case of an equality of votes, the chairperson shall have a casting vote;

(c) where any of the authorities, multi-State co-operative society or a co-operative society referred to in clauses (b) to (g) of sub-section (1) of section 25 is a member of a multi-State co-operative society, each person nominated by such authority or society, on the board in accordance with the provisions contained in this Act and the rules, shall, have one vote;

(d) a multi-State co-operative society, the membership of which include co-operative societies or other multi-State co-operative societies, may provide in its bye-laws for an equitable system of voting having regard to the membership of, and the extent of business carried on, by such co-operative societies or multi-State co-operative societies.

Manner of exercising vote.

32. Every member of a multi-State co-operative society shall exercise his vote in person and no member shall be permitted to vote by proxy:

Provided that a multi-State co-operative society or a co-operative society or any other institution which is a member of any other multi-State co-operative society may, subject to the provisions of sub-section (3) of section 38 and the rules, appoint its representative to vote on its behalf in the affairs of such multi-State co-operative society.

Restriction on holding of shares.

33. No member, other than the authorities referred to in clauses (c) to (g) of sub-section (1) of section 25 or a multi-State co-operative society or a co-operative society, shall hold more than such portion of the total share capital of the society (in no case exceeding one-fifth thereof) as may be prescribed in the rules or bye-laws of such multi-State co-operative society.

Restriction on transfer of shares or interest.

34. The transfer of share or interest of a member in the capital of a multi-State co-operative society shall be subject to such conditions as to maximum holding as specified in section 33.

Redemption of shares.

35. (1) Shares held in a multi-State co-operative society by any of the authorities referred to in clauses (c) to (g) of sub-section (1) of section 25 shall be redeemable in accordance with the bye-laws of such multi-State co-operative society and in a case where the bye-laws do not contain any provision in this regard, in such manner as may be agreed upon between the multi-State co-operative society and such authority.

(2) The redemption of shares referred to in sub-section (1) shall be on the face value of the shares.

Transfer of interest on death of members.

36. (1) On the death of a member, a multi-State co-operative society may transfer the share or interest of the deceased member to the person nominated in accordance with the bye-laws made in this behalf or, if there is no person nominated, to such person as may appear to the board to be the heir or legal representative of the deceased member, or pay to such nominee, heir or legal representative, as the case may be, a sum representing the value of such member's share or interest as ascertained in accordance with the rules:

Provided that no such transfer or payment shall be made except with the consent of the nominee, heir or legal representative, as the case may be.

(2) A multi-State co-operative society shall, unless within six months of the death of the member prevented by an order of a competent court, pay to such nominee, heir or legal representative, as the case may be, all other moneys due to the deceased member from the society.

(3) All transfers and payments made by a multi-State co-operative society in accordance with the provisions of this section shall be valid and effectual against any demand made upon the society by any other person.

37. (1) Subject to the provisions of sub-section (2), the liability of a past member or of the estate of a deceased member of a multi-State co-operative society for the debts of the society as they existed,—

Liabilities of
past member
and estate of
deceased
member.

(a) in the case of a past member, on the date on which he ceased to be a member;

(b) in the case of a deceased member, on the date of his death,

shall continue for a period of two years from such date.

(2) Notwithstanding anything contained in sub-section (1), where a multi-State co-operative society is ordered to be wound up under section 86, the liability of a past member who ceased to be a member or of the estate of a deceased member who died within two years immediately preceding the date of the order of winding up, shall continue until the entire liquidation proceedings are completed, but such liability shall extend only to the debts of the society as they existed on the date of cessation of membership or death, as the case may be.

CHAPTER V

DIRECTION AND MANAGEMENT OF MULTI-STATE CO-OPERATIVE SOCIETIES

38. (1) The general body of a multi-State co-operative society shall consist of all the members of such society:

Constitution,
powers and
functions of
general body.

Provided that where the bye-laws of a multi-State co-operative society provide for the constitution of a smaller body consisting of delegates of members of the society elected or selected in accordance with such bye-laws, that smaller body shall exercise such powers of the general body as may be prescribed or as may be specified in the bye-laws of the society.

(2) Subject to the provisions of this Act, the rules and the bye-laws, the ultimate authority of a multi-State co-operative society shall vest in the general body of its members:

Provided that nothing contained in this sub-section shall affect the exercise by the board or any officer of a multi-State co-operative society of any power conferred on such board or such officer by this Act or the rules or the bye-laws.

(3) Where in any meeting of the general body or the board of a multi-State co-operative society, a co-operative society or another multi-State co-operative society is to be represented, such co-operative society or other multi-State co-operative society shall be represented in such meeting only through the Chairperson or the president or the Chief Executive or a member of the board of such co-operative society or other multi-State co-operative society, as the case may be, if such member is so authorised by the board and where there is no board of such co-operative society or other multi-State co-operative society, for whatever reasons, through the administrator, by whatever name called, of such co-operative society or other multi-State co-operative society:

Provided that where the bye-laws of a multi-State co-operative society provide for representation of other institutions in any meeting of general body or the board of such multi-State co-operative society, such institutions shall be represented through its nominee.

Annual
general
meeting of
general body.

39. (1) The board of every multi-State co-operative society shall, within such period as may be prescribed, and not later than six months after the close of the corresponding year, call the annual general meeting in the manner prescribed for the purpose of—

- (a) consideration of the audited statement of accounts;
- (b) consideration of the audit report and annual report;
- (c) consideration of audit compliance report;
- (d) disposal of net profits;
- (e) review of operational deficit, if any;
- (f) creation of specific reserves and other funds;
- (g) approval of the annual budget;
- (h) review of actual utilisation of reserve and other funds;
- (i) approval of the long-term perspective plan and the annual operational plan;
- (j) review of annual report and accounts of subsidiary institution, if any;
- (k) expulsion of members;
- (l) list of employees who are relatives of members of the board or of the Chief Executive;
- (m) amendment of bye-laws, if any;
- (n) formulation of code of conduct for the members of the board and officers;
- (o) election of members of the board, if any.

(2) Where the board of a multi-State co-operative society fails to convene the annual general meeting within the period specified in sub-section (1), the Central Registrar or the person authorised by him in this behalf shall be competent to convene such annual general meeting within a period of ninety days from the date of expiry of the period mentioned in that sub-section and the expenditure incurred on such meeting shall be borne by the society.

(3) At every annual general meeting of a multi-State co-operative society, the board shall lay before the society a statement showing the details of the loans or goods on credit, if any, given to any of the members of the board or to the spouse or a son or daughter of a member of the board during the preceding year or outstanding against him or against such spouse or son or daughter of the member of the board.

Special
general
meeting of
general body.

40. (1) The Chief Executive may, at any time, on the direction of the board, call a special general meeting of the society and shall call such meeting within one month after the receipt of a requisition in writing from the Central Registrar or from such member or members or a proportion of the total number of members, as may be provided in the bye-laws.

(2) If a special general meeting of a multi-State co-operative society is not called in accordance with the requisition referred to in sub-section (1), the Central Registrar or any person authorised by him in this behalf shall have the power to call such meeting and that meeting shall be deemed to be a meeting called by the Chief Executive in accordance with the provisions of that sub-section and the Central Registrar may order that the expenditure incurred in calling such meeting shall be paid out of the funds of the society or by such person or persons who, in the opinion of the Central Registrar, was or were responsible for the refusal or failure to convene the special general meeting.

Board of
directors.

41. (1) Subject to the provisions of this Act and rules, there shall be a board of directors for every multi-State co-operative society consisting of such number of members as specified in sub-section (3).

(2) The members of a multi-State co-operative society, by a resolution in a general meeting, shall elect directors who shall be members of board.

(3) The board shall consist of such number of directors as may be specified in the bye-laws:

Provided that the maximum number of directors in no case shall exceed twenty-one:

Provided further that the board may co-opt two directors in addition to twenty-one directors specified in the first proviso:

Provided also that the functional directors in the national co-operative societies shall also be the members of the board and such members shall be excluded for the purpose of counting the total number of directors specified in the first proviso.

42. Every multi-State co-operative society shall devise such procedure, as may be specified in the bye-laws or in the administrative instructions of such society, for the association of the representatives of employees of such multi-State co-operative societies at such level or bodies as may be specified in the bye-laws or the instructions issued in this regard, in the management decision making process.

Association of employees in management decision making process.

43. (1) No member of any multi-State co-operative society or nominee of a member, society or a national co-operative society shall be eligible for being chosen as, or for being, a member of the board of such multi-State co-operative society or a national co-operative society, or of any other co-operative society to which the multi-State co-operative society is affiliated, if such member—

Disqualifications for being a member of board.

(a) has been adjudged by a competent court to be insolvent or of unsound mind;

(b) is concerned or participates in the profits of any contract with the society;

(c) has been convicted for an offence involving moral turpitude;

(d) holds any office or place of profit under the society:

Provided that the Chief Executive or such full-time employee of the society as may be notified by the Central Government from time to time or a person elected by the employees of such society to represent them on the board of such society shall be eligible for being chosen as, or for being, a member of such board;

(e) has been a member of the society for less than twelve months immediately preceding the date of such election or appointment;

(f) has interest in any business of the kind carried on by the society of which he is a member;

(g) has taken loan or goods on credit from the society of which he is a member, or is otherwise indebted to such society and after the receipt of a notice of default issued to him by such society, has defaulted—

(i) in repayment of such loan or debt or in payment of the price of the goods taken on credit, as the case may be, within the date fixed for such repayment or payment or where such date is extended, which in no case shall exceed six months, within the date so extended, or

(ii) when such loan or debt or the price of goods taken on credit is to be paid in instalments, in payment of any instalment, and the amount in default or any part thereof has remained unpaid on the expiry of six months from the date of such default:

Provided that a member of the board who has ceased to hold office as such under this clause shall not be eligible, for a period of one year, from the date on which he ceased to hold office, for re-election as a member of the board of the multi-State co-operative society of which he was a member or for the election to the board of any other multi-State co-operative society;

(h) is a person against whom any amount due under a decree, decision or order is pending recovery under this Act;

(i) is retained or employed as a legal practitioner on behalf of or against the multi-State co-operative society, or on behalf of or against any other multi-State co-operative society which is a member of the former society.

Explanation.—For the purposes of this clause, "legal practitioner" has the same meaning as in clause (i) of sub-section (1) of section 2 of the Advocates Act, 1961;

25 of 1961.

(j) has been convicted for any offence under this Act;

(k) is disqualified for being a member under section 29;

(l) has been expelled as a member under section 30;

(m) absents himself from three consecutive board meetings and such absence has not been condoned to by the board;

(n) absents himself from three consecutive general body meetings and such absence has not been condoned by the members in the general body.

(2) A person shall not be eligible for being elected as member of a board of a multi-State co-operative society for a period of five years if the board of such multi-State co-operative society fails—

(a) to conduct elections of the board under section 45; or

(b) to call the annual general meeting under section 39; or

(c) to prepare the financial statement and present the same in the annual general meeting.

Prohibition to hold office of chairperson or president or vice-chairperson or vice-president in certain cases.

44. (1) No member of a board shall be eligible to be elected as the chairperson or president or vice-chairperson or vice-president of a multi-State co-operative society if such member is a Minister in the Central Government or a State Government.

(2) No member of a board shall be eligible to be elected as the chairperson or president of a multi-State co-operative society, after he has held the office, as such during two consecutive terms, whether full or part:

Provided that a member who has ceased to hold the office of the chairperson or president continuously for one full term shall again be eligible for election to the office as such.

Explanation.—Where any member holding the office of the chairperson or president at the commencement of this Act is again elected to that office after such commencement, he shall for the purpose of this section, be deemed to have held office for one term before such election.

Elections of members of board.

45. (1) The conduct of elections to the board of a multi-State co-operative society shall be the responsibility of the existing board.

(2) The election of members of board shall be held by secret ballot in the manner as may be prescribed.

(3) The election of the members of the board shall be held in the general meeting of the members of the multi-State co-operative society.

(4) The elected members of the board shall, if the bye-laws of such society permit, be eligible for re-election.

(5) The term of office of the elected members of the board shall be such, not exceeding five years from the date of elections, as may be specified in the bye-laws of a multi-State co-operative society:

Provided that elected members shall continue to hold office till their successors are elected or nominated under the provisions of this Act or the rules or bye-laws and assume charge of their office.

(6) Where the board fails to conduct election of the members of board, the Central Registrar shall hold the election within a period of ninety days from the date when such election became due.

(7) No person shall be eligible to be elected as a member of the board of a multi-State co-operative society unless he is a member of the general body of that society.

(8) The expenses for holding election by the Central Registrar shall be borne by the multi-State co-operative society.

(9) The Central Government may make rules generally to provide for or to regulate matters in respect of election of members of the board.

46. Notwithstanding anything contained in this Act, no person shall be eligible to hold, at the same time, office of a president or chairperson or vice-president or vice-chairperson on the board of more than two multi-State co-operative societies.

Holding of office in co-operative society.

47. An elected member of a board, who has acted adversely to the interests of multi-State co-operative society, may on the basis of a report of the Central Registrar or otherwise be removed from the board upon a resolution of the general body passed at its meeting by a majority of not less than two-third of the members present and voting at the meeting:

Removal of elected members by general body.

Provided that the member concerned shall not be removed unless he has been given a reasonable opportunity of making a representation in the matter.

48. (1) Where the Central Government or a State Government has subscribed to the share capital of a multi-State co-operative society, the Central Government or the State Government, as the case may be, or any person authorised by the Central Government or the State Government shall have right to nominate on the board such number of persons as its members on the following basis, namely:—

Nominee of Central Government or State Government on board.

(a) where the total amount of issued equity share capital held by the Central Government or the State Government is less than twenty-six per cent. of the total issued equity share capital, one member of the board;

(b) where the total amount of issued equity share capital held by the Central Government or the State Government is twenty-six per cent. or more but less than fifty-one per cent. of the total issued equity share capital, two members of the board;

(c) where the total amount of issued equity share capital held by the Central Government or the State Government is fifty-one per cent. or more of the total issued share capital, three members of the board:

Provided that the number of such nominated persons shall not exceed one-third of the total number of members of the board:

Provided further that where the Central Government or a State Government has guaranteed the repayment of principal and payment of interest on debentures issued by a multi-State co-operative society or has guaranteed the repayment of principal and payment of interest on loans and advances to a multi-State co-operative society or has given any assistance by way of grants or otherwise to a multi-State co-operative society, the Central Government or the State Government in this behalf, as the case may be, or any person authorised by the Central Government, shall have the right to nominate person on the board of such a society in the manner as may be prescribed.

(2) A person nominated under this section shall hold office during the pleasure of the Government by which he has been so nominated.

49. (1) The board may exercise all such powers as may be necessary or expedient for the purpose of carrying out its functions under this Act.

Powers and functions of board.

(2) Without prejudice to the generality of the foregoing powers, such powers shall include the power—

(a) to admit members;

(b) to interpret the organisational objectives and set-up specific goals to be achieved towards these objectives;

(c) to make periodic appraisal of operations;

(d) to appoint and remove a Chief Executive and such other employees of the society as are not required to be appointed by the Chief Executive;

(e) to make provisions for regulating the appointment of employees of the multi-State co-operative society and the scales of pay, allowances and other conditions of service of, including disciplinary action against such employees;

(f) to place the annual report, annual financial statements, annual plan and budget for the approval of the general body;

(g) to consider audit and compliance report and place the same before the general body;

(h) to acquire or dispose of immovable property;

(i) to review membership in other co-operatives;

(j) to approve annual and supplementary budget;

(k) to raise funds;

(l) to sanction loans to the members; and

(m) to take such other measures or to do such other acts as may be prescribed or required under this Act or the bye-laws or as may be delegated by the general body.

Meeting of
board.

50. (1) The Chief Executive shall convene the meetings of the board at the instance of the chairperson or president of the multi-State co-operative society.

(2) The total number of meetings of the board in a year and the venue of meetings as may be specified in the bye-laws:

Provided that the board shall meet at least once in every quarter:

Provided further that not more than two persons may be invited by the board in its meetings.

(3) The Chairperson, or if for any reason, he is unable to attend a meeting of the board, any other member of the board chosen by the members of the board present from amongst themselves at the meeting, shall preside at the meeting.

Chief
Executive.

51. (1) There shall be a Chief Executive, by whatever designation called, of every multi-State co-operative society to be appointed by the board and he shall be a full-time employee of such multi-State co-operative society.

(2) The Chief Executive shall be a member of the board and of the Executive Committee and such other committees or sub-committees as may be constituted under sub-section (1) of section 53.

(3) Where the Central Government or the State Government holds fifty-one per cent. or more of the equity share capital or of total shares of the multi-State co-operative society, the salary and allowances payable to and other terms and conditions of service including pension, gratuity and other retirement benefits of the Chief Executive shall be such as may be prescribed.

Powers and
functions of
Chief
Executive.

52. The Chief Executive shall under the general superintendence, direction and control of the board, exercise the powers and discharge the functions specified below, namely:—

(a) day-to-day management of the business of the multi-State co-operative society;

(b) operating the accounts of the multi-State co-operative society and be responsible for making arrangements for safe custody of cash;

(c) signing on the documents for and on behalf of the multi-State co-operative society;

(d) making arrangements for the proper maintenance of various books and records of the multi-State co-operative society and for the correct preparation, timely submission of periodical statements and returns in accordance with the provisions of this Act, the rules and the bye-laws;

(e) convening meetings of the general body of the multi-State co-operative society, the board and the Executive Committee and other committees or sub-committees constituted under sub-section (1) of section 53 and maintaining proper records for such meetings;

(f) making appointments to the posts in the multi-State co-operative society in accordance with the bye-laws;

(g) assisting the board in the formulation of policies, objectives and planning;

(h) furnishing to the board periodical information necessary for appraising the operations and functions of the multi-State co-operative society;

(i) appoint the person to sue or be sued on behalf of the multi-State co-operative society;

(j) present the draft annual report and financial statements for the approval of the board within thirty days of closure of the financial year;

(k) performing such other duties, and exercising such other powers, as may be specified in the bye-laws of the multi-State co-operative society.

53. (1) The board may, subject to such conditions as may be prescribed, constitute an Executive Committee and other committees or sub-committees as may be considered necessary: Committees of board.

Provided that other committees or sub-committees, other than the Executive Committee shall not exceed three.

(2) The Executive Committee or other committee or sub-committee referred to in sub-section (1) shall perform such functions as are assigned to it in accordance with the bye-laws of the multi-State co-operative society.

54. (1) If—

(a) the records, including registers and books of account of a multi-State co-operative society are likely to be tampered with or destroyed or the funds or other property of such society are likely to be mis-appropriated; or

(b) the board of a multi-State co-operative society is reconstituted at a general meeting of the society; or

(c) a multi-State co-operative society is ordered to be wound up under section 86 and the outgoing members of the board refuse to handover charge of the records and property of the society to those having or entitled to receive such charge,

the Chief Executive may apply to the magistrate within whose jurisdiction the multi-State co-operative society functions for securing the records and property of the society.

(2) On receipt of an application under sub-section (1), the magistrate may, by a warrant, authorise any police officer not below the rank of a sub-inspector to enter and search any place where such records and property are kept or are believed to be kept and to seize such records and property; and the records and property so seized shall be handed over to the new board or the liquidator, as the case may be.

(3) Every such search and seizure shall be made in accordance with the provisions of the Code of Criminal Procedure, 1973.

CHAPTER VI

PRIVILEGES OF MULTI-STATE CO-OPERATIVE SOCIETIES

55. A multi-State co-operative society shall have a charge on the share or contribution or interest in the capital and on the deposits of a member or past or deceased member and on any dividend, bonus or profits payable to a member or past member or the estate of a deceased member in respect of any debt due from such member or past member or the estate of such deceased member to the society and may set-off any sum credited or payable to a member or past member or the estate of deceased member in or towards payment of any such debt.

Charge and set-off in respect of share or contribution or interest of members.

Securing possession of records, etc.

Share or contribution or interest not liable to attachment.

56. (1) Subject to the provisions of section 55, the share or contribution or interest of a member or past or deceased member in the capital of a multi-State co-operative society shall not be liable to attachment or sale under any decree or order of any court in respect of any debt or liability incurred by such member, and an official assignee or a receiver under any law relating to insolvency shall not be entitled to, or have any claim on, such share or contribution or interest.

(2) The reserve fund, or the bad debt reserves, or the provident fund of the employees, of a multi-State co-operative society invested by such society in accordance with the provisions of this Act and the bye-laws shall not be liable to attachment under any decree or order of a court in respect of any debt or liability incurred by the society.

Register of members.

57. Any register or list of members or shares kept by any multi-State co-operative society shall be *prima facie* evidence of any of the following particulars entered therein, namely:—

(a) the date on which any person entered in such register or list became a member; and

(b) the date on which any such person ceased to be a member.

Admissibility of copy of entry as evidence.

58. (1) A copy of any entry in a book of a multi-State co-operative society regularly kept in the course of its business shall, if certified in such manner as may be prescribed, be received in any suit or legal proceedings as *prima facie* evidence of the existence of such entry and shall be admitted as evidence of the matters, transactions and accounts therein recorded in every case where, and to the same extent, as the original entry itself is admissible.

(2) No officer of a multi-State co-operative society and no officer in whose office the books of a multi-State co-operative society are deposited after liquidation shall, in any legal proceedings to which the society or the liquidator is not a party, be compelled to produce any of the society's books or documents the contents of which can be proved under this section, or to appear as a witness to prove the matters, transactions and accounts therein recorded, except under an order of a court or an arbitrator made for a special cause.

Exemption from compulsory registration of instruments.

59. Nothing in clauses (b) and (c) of sub-section (1) of section 17 of the Registration Act, 1908 shall apply to—

16 of 1908.

(a) any instrument relating to shares in a multi-State co-operative society notwithstanding that the assets of the society consist in whole or in part of immovable property; or

(b) any debenture issued by any such society and not creating, declaring, assigning, limiting or extinguishing any right, title or interest to or in immovable property, except in so far as it entitles the holder thereof to the security afforded by a registered instrument whereby the society has mortgaged, conveyed or otherwise transferred the whole or part of its immovable property or any interest therein to trustees upon trust for the benefit of the holders of such debentures; or

(c) an endorsement upon transfer of any debenture issued by any such society.

Deduction from salary to meet multi-State co-operative society's claim in certain cases.

60. (1) Notwithstanding anything contained in any law for the time being in force, a member of a multi-State co-operative society may execute an agreement in favour of that society providing that his employer disbursing his salary or wages shall be competent to deduct every month from the salary or wages payable to him, such amount as may be specified in the agreement and to pay the amount so deducted to the society in satisfaction of any debt or other demand the member owes to the society.

(2) On the execution of such agreement, the employer disbursing the salary or wages of the members shall, if so required by the multi-State co-operative society, by a requisition in writing and so long as the society does not intimate that the whole of such debt or other

4 of 1936.

demand has been paid, make the deduction in accordance with the agreement and pay the amount so deducted to the society within a period of fourteen days of the date on which deduction has been made, as if it were a part of the salary or wages payable on the day as required under the Payment of Wages Act, 1936, and such payment shall be valid discharge of the employer for his liability to pay the amount deducted.

(3) If after the receipt of a requisition made under sub-section (2), the employer disbursing the salary or wages of the member at any time fails to deduct the amount specified in the requisition from the salary or wages payable to the member concerned or makes default in remitting the amount deducted to the multi-State co-operative society, the society shall be entitled to recover any such amount from such employer as arrears of land revenue and the amount so due from such employer shall rank in priority in respect of the liability of such employer equal to that of the salary or wages in arrears.

61. Notwithstanding anything contained in any law for the time being in force, the Central Government or a State Government, on receipt of request from a multi-State co-operative society and with a view to promoting co-operative movement, may,—

Government aid to multi-State co-operative societies.

- (a) subscribe to the share capital of a multi-State co-operative society;
- (b) give loans or make advances to a multi-State co-operative society;
- (c) guarantee the repayment of principal and payment of interest on debentures issued by a multi-State co-operative society;
- (d) guarantee the repayment of share capital of a multi-State co-operative society and dividends thereon at such rates as may be specified by the Central Government or the State Government;
- (e) guarantee the repayment of principal and payment of interest on loans and advances to a multi-State co-operative society;
- (f) give financial assistance in any other form, including subsidies, to any multi-State co-operative society; and
- (g) provide aid to any other multi-State co-operative society on such terms and conditions as may be prescribed.

CHAPTER VII

PROPERTIES AND FUNDS OF MULTI-STATE CO-OPERATIVE SOCIETIES

62. (1) No part of the funds, other than net profits, of a multi-State co-operative society shall be divided by way of bonus or dividend or otherwise distributed among its members.

Funds not to be divided by way of profit.

43 of 1961.

(2) The net profits of a multi-State co-operative society referred to in sub-section (1) in respect of a society earning profits shall be calculated by deducting from the gross profit for the year, all interest accrued and accruing in relation to amounts which are overdue, establishment charges, interest payable on loans and deposits, audit fees, working expenses including repairs, rent, taxes and depreciation, bonus payable to employees under the law relating to payment of bonus for the time being in force, and equalisation fund for such bonus, provision for payment of income-tax and making approved donations under the Income-tax Act, 1961, development rebate, provision for development fund, bad debt fund, price fluctuation fund, dividend equalisation fund, share capital redemption fund, investment fluctuation fund, provision for retirement benefits to employees, and after providing for or writing off bad debts and losses not adjusted against any fund created out of profit:

Provided that such society may add to the net profits for the year interest accrued in the preceding years, but actually recovered during the year:

Provided further that in the case of such multi-State co-operative societies as do not have share capital, the surplus of income over expenditure shall not be treated as net profits and such surplus shall be dealt with in accordance with the bye-laws.

Disposal of
net profits.

63. (1) A multi-State co-operative society shall, out of its net profits in any year,—

- (a) transfer an amount not less than twenty-five per cent. to the reserve fund;
- (b) credit one per cent. to co-operative education fund maintained, by the National Co-operative Union of India Limited, New Delhi, in the manner as may be prescribed;
- (c) transfer an amount not less than ten per cent. to a reserve fund for meeting unforeseen losses.

(2) Subject to such conditions as may be prescribed, the balance of the net profits may be utilised for all or any of the following purposes, namely:—

- (a) payment of dividend to the members on their paid-up share capital at a rate not exceeding the prescribed limit;
- (b) constitution of, or contribution to, such special funds including education funds, as may be specified in the bye-laws;
- (c) donation of amounts not exceeding five per cent. of the net profits for any purpose connected with the development of co-operative movement or charitable purpose as defined in section 2 of the Charitable Endowments Act, 1890;
- (d) payment of *ex gratia* amount to employees of the multi-State co-operative society to the extent and in the manner specified in the bye-laws.

6 of 1890.

Investment of
funds.

64. A multi-State co-operative society may invest or deposit its funds—

- (a) in a co-operative bank, State co-operative bank, co-operative land development bank or Central co-operative bank; or
- (b) in any of the securities specified in section 20 of the Indian Trusts Act, 1882; or
- (c) in the shares or securities of any other multi-State co-operative society or any co-operative society; or
- (d) in the shares, securities or assets of a subsidiary institution or any other institution; or
- (e) with any other bank; or
- (f) in such other mode as may be provided in the bye-laws.

2 of 1882.

Explanation.—For the purposes of clause (e), "bank" means any banking company as defined in clause (c) of section 5 of the Banking Regulation Act, 1949, and includes—

10 of 1949.

(i) the State Bank of India constituted under the State Bank of India Act, 1955;

23 of 1955.

(ii) a subsidiary bank as defined in clause (k) of section 2 of the State Bank of India (Subsidiary Banks) Act, 1959;

38 of 1959.

(iii) a corresponding new bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 or a corresponding new bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980.

5 of 1970.

40 of 1980.

Restriction on
contribution.

65. No multi-State co-operative society shall make a contribution, either in money or in kind, whether directly or indirectly, to an institution which has an object of furtherance of the interest of a political party.

66. (1) A multi-State co-operative society, other than a co-operative bank, shall not make a loan to a member on the security of his share or on the security of a non-member. Restriction on loans.

(2) Notwithstanding anything contained in sub-section (1), a multi-State co-operative society may make a loan to a depositor on the security of his deposit.

67. (1) A multi-State co-operative society may receive deposits, raise loans and receive grants from external sources to such extent and under such conditions as may be specified in the bye-laws: Restriction on borrowing.

Provided that the total amount of deposits and loans received during any financial year shall not exceed ten times of the sum of subscribed share capital and accumulated reserves:

Provided further that while calculating the total sum of subscribed share capital and accumulated reserves, the accumulated losses shall be deducted.

(2) Subject to the provisions of sub-section (1), a multi-State co-operative society may accept funds or borrow funds for the fulfilment of its objects on such terms and conditions as are mutually contracted upon.

(3) A multi-State co-operative society may issue non-convertible debentures or other instruments subject to the provisions of any law for the time being in force to raise resources for the fulfilment of its objects to the extent of twenty-five per cent. of its paid-up share capital.

68. Save as provided in sections 66 and 67, the transaction of a multi-State co-operative society with any person other than a member, shall be subject to such prohibitions and restrictions, if any, as may be specified in the bye-laws. Restriction on other transactions with non-members.

19 of 1952.

69. (1) Subject to the provisions of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952, a multi-State co-operative society having such number or class of employees as may be prescribed, may establish a contributory provident fund for the benefit of its employees to which shall be credited all contributions made by the employees and the society in accordance with the bye-laws of the society. Contributory provident fund.

(2) Monies standing to the credit of any contributory provident fund established by a multi-State co-operative society under sub-section (1) shall not—

- (a) be used in the business of the society;
- (b) form part of the assets of the society;
- (c) be liable to attachment or be subject to any other process of any court or other authority.

CHAPTER VIII

AUDIT, INQUIRY, INSPECTION AND SURCHARGE

70. (1) Every multi-State co-operative society shall cause to be audited by an auditor referred to in sub-section (2), its accounts at least once in each year. Appointment and remuneration of auditors.

(2) Every multi-State co-operative society shall, at each annual general meeting, appoint an auditor or auditors to hold office from the conclusion of that meeting until the conclusion of the next annual general meeting and shall, within seven days of the appointment, give intimation thereof to every auditor so appointed:

Provided that such auditor or auditors may be appointed from a panel of auditors approved by the Central Registrar or from a panel of auditors, if any, prepared by the multi-State co-operative society.

(3) Every auditor appointed under sub-section (1) shall, within thirty days of the receipt from the multi-State co-operative society of the intimation of his appointment, inform the Central Registrar in writing that he has accepted, or refused to accept, the appointment.

(4) A retiring auditor shall be re-appointed unless—

(a) he is not qualified for re-appointment;

(b) he has given the multi-State co-operative society a notice in writing of his unwillingness to be re-appointed;

(c) a resolution has been passed at the general meeting of members appointing some body instead of him or providing expressly that he shall not be re-appointed; or

(d) where notice has been given of an intended resolution to appoint some person or persons in the place of a retiring auditor, and by reason of the death, incapacity or disqualification of that person or all those persons, as the case may be, the resolution cannot be proceeded with.

(5) Where at an annual general meeting no auditors are appointed or re-appointed, the Central Registrar may appoint a person to fill the vacancy.

(6) First auditor or auditors of a multi-State co-operative society shall be appointed by the board within one month of the date of registration of such society and the auditor or auditors so appointed shall hold office until the conclusion of the first annual general meeting:

Provided that—

(a) the multi-State co-operative society may, at a general meeting, remove any such auditor or all or any of such auditors and appoint in his or their places any other person or persons who have been nominated for appointment by any member of the multi-State co-operative society and of whose nomination notice has been given to the members of the multi-State co-operative society not less than fourteen days before the date of the meeting; and

(b) if the board fails to exercise its powers under this sub-section, the multi-State co-operative society in the general meeting may appoint the first auditor or auditors.

(7) (a) The multi-State co-operative society may fill any casual vacancy in the office of an auditor; but while any such vacancy continues, the remaining auditor or auditors, if any, may act:

Provided that where such vacancy is caused by the resignation of an auditor, the vacancy shall only be filled by the multi-State co-operative society in general meeting.

(b) Any auditor appointed in a casual vacancy shall hold office until the conclusion of the next annual general meeting.

(8) Any auditor appointed under this section may be removed from office before the expiry of his term by the multi-State co-operative society in general meeting.

(9) The remuneration of the auditors of a multi-State co-operative society—

(a) in the case of an auditor appointed by the board or the Central Registrar may be fixed by the board or the Central Registrar, as the case may be; and

(b) subject to clause (a), shall be fixed by the multi-State co-operative society in general meeting or in such manner as the multi-State co-operative society in general meeting may determine.

Explanation.—For the purposes of this sub-section, any sums paid by the multi-State co-operative society in respect of the auditors' expenses shall be deemed to be included in the expression "remuneration".

Provision as to
resolutions for
appointing or
removing
auditors.

71. (1) A special notice shall be required for a resolution at an annual general meeting appointing as auditor a person other than a retiring auditor, or providing expressly that a retiring auditor shall not be re-appointed.

(2) On receipt of notice of such a resolution, the multi-State co-operative society shall forthwith send a copy thereof to the retiring auditor.

(3) Where notice is given of such a resolution and the retiring auditor makes with respect thereto representations in writing to the multi-State co-operative society (not exceeding a reasonable length) and requests their notification to members of the multi-State co-operative society, the multi-State co-operative society shall, unless the representations are received by it too late for it to do so,—

(a) in any notice of the resolution given to members of the multi-State co-operative society, state the fact of the representations having been made; and

(b) send a copy of the representation to every member of the multi-State co-operative society to whom notice of the meeting is sent, whether before or after the receipt of the representations by the multi-State co-operative society,

and if a copy of the representations is not sent as aforesaid because they were received too late or because of the multi-State co-operative society's default, the auditor may (without prejudice to his right to be heard orally) require that the representations shall be read out at the meeting.

38 of 1949.

72. (1) A person shall not be qualified for appointment as an auditor of a multi-State co-operative society unless he is a chartered accountant within the meaning of the Chartered Accountants Act, 1949.

Qualifications and disqualifications of auditors.

(2) None of the following persons shall be qualified for appointment as auditor of a multi-State co-operative society—

(a) a body corporate;

(b) an officer or employee of the multi-State co-operative society;

(c) a person who is a member, or who is in the employment, of an officer or employee of the multi-State co-operative society;

(d) a person who is indebted to the multi-State co-operative society or who has given any guarantee or provided any security in connection with the indebtedness of any third person to the multi-State co-operative society for an amount exceeding one thousand rupees.

(3) A person shall also not be qualified for appointment as an auditor of a multi-State co-operative society if he is, by virtue of sub-section (2), disqualified for appointment as an auditor of any other body corporate or multi-State co-operative society or co-operative society.

(4) If an auditor becomes subject, after his appointment, to any of the disqualifications specified in sub-sections (2) and (3), he shall be deemed to have vacated his office as such.

73. (1) Every auditor of a multi-State co-operative society shall have a right of access at all times to the books, accounts and vouchers of the multi-State co-operative society, whether kept at the head office of the multi-State co-operative society or elsewhere, and shall be entitled to require from the officers or other employees of the multi-State co-operative society such information and explanations as the auditor may think necessary for the performance of his duties as an auditor.

Powers and duties of auditors.

(2) Without prejudice to provisions of sub-section (1), the auditor shall inquire,—

(a) whether loans and advances made by the multi-State co-operative society on the basis of security have been properly secured and whether the terms on which they have been made are not prejudicial to the interests of the multi-State co-operative society or its members;

(b) whether transactions of the multi-State co-operative society which are represented merely by book entries are not prejudicial to the interests of the multi-State co-operative society;

(c) whether personal expenses have been charged to revenue account; and

(d) where it is stated in the books and papers of the multi-State co-operative society that any shares have been allotted for cash, whether cash has actually been received in respect of such allotment, and if no cash has actually been so received, whether the position as stated in the account books and the balance-sheet is correct, regular and not misleading.

(3) The auditor shall make a report to the members of the multi-State co-operative society on the accounts examined by him and on every balance-sheet and profit and loss account and on every other document required to be part of or annexed to the balance-sheet or profit and loss account, which are laid before the multi-State co-operative society in general meeting during his tenure of office, and the report shall state whether, in his opinion and to the best of his information and according to the explanations given to him, the said accounts give the information required by this Act in the manner so required and give a true and fair view,—

(a) in the case of the balance-sheet, of the state of the multi-State co-operative society's affairs as at the end of its financial year; and

(b) in the case of the profit and loss account, of the profit or loss for its financial year.

(4) The auditors' report shall also state—

(a) whether he has obtained all the information and explanations which to the best of his knowledge and belief were necessary for the purposes of his audit;

(b) whether, in his opinion, proper books of account have been kept by the multi-State co-operative society so far as appears from his examination of those books, and proper returns adequate for the purposes of his audit have been received from branches or offices of the multi-State co-operative society not visited by him;

(c) whether the report on the accounts of any branch office audited by a person other than the multi-State co-operative society's auditor has been forwarded to him and how he has dealt with the same in preparing the auditor's report;

(d) whether the multi-State co-operative society's balance-sheet and profit and loss account dealt with by the report are in agreement with the books of account and returns.

(5) Where any of the matters referred to in clauses (a) and (b) of sub-section (3) or in clauses (a), (b), (c) and (d) of sub-section (4) is answered in the negative or with a qualification, the auditor's report shall state the reason for the answer.

Signature of
audit report,
etc.

74. Only the person appointed as an auditor of the multi-State co-operative society shall sign the auditor's report, or sign or authenticate any other document of the multi-State co-operative society required by law to be signed or authenticated by the auditor.

Reading and
inspection of
auditor's
report.

75. The auditor's report shall be read before the multi-State co-operative society in the general meeting and shall be open to inspection by any member of the multi-State co-operative society.

Right of
auditor to
attend general
meeting.

76. All notices of, and other communications relating to, any general meeting of a multi-State co-operative society, which any member of the multi-State co-operative society is entitled to have sent to him, shall also be forwarded to the auditor of the multi-State co-operative society; and the auditor shall be entitled to attend any general meeting and to be heard at any general meeting which he attends on any part of the business which concerns him as auditor.

Power of
Central Govern-
ment to direct
special audit in
certain cases.

77. (1) Where the Central Government is of the opinion—

(a) that the affairs of any multi-State co-operative society are not being managed

in accordance with self-help and mutual aid and co-operative principles or prudent commercial practices; or with sound business principles; or

(b) that any multi-State co-operative society is being managed in a manner likely to cause serious injury or damage to the interests of the trade, industry or business to which it pertains; or

(c) that the financial position of any multi-State co-operative society is such as to endanger its solvency,

the Central Government may at any time by order direct that a special audit of the multi-State co-operative society's accounts for such period or periods as may be specified in the order, shall be conducted and may by the same or a different order appoint either a chartered accountant as defined in clause (b) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949 or the multi-State co-operative society's auditor himself to conduct with special audit:

38 of 1949.

Provided that the Central Government shall not order for special audit of a multi-State co-operative society's accounts if that Government or the State Government either by itself or both hold less than fifty-one per cent. of the paid-up share capital or of the shares in such multi-State co-operative society.

(2) The chartered accountant or the multi-State co-operative society's auditor appointed under sub-section (1) to conduct a special audit as aforesaid is hereafter in this section referred to as the special auditor.

(3) The special auditor shall have the same powers and duties in relation to the special audit as an auditor of a multi-State co-operative society has under section 73:

Provided that the special auditor shall, instead of making his report to the members of the multi-State co-operative society, make the same to the Central Government.

(4) The report of the special auditor shall, as far as may be, include all the matters required to be included in the auditors' report under section 73 and, if the Central Government so directs, shall also include a statement on any other matter which may be referred to him by that Government.

(5) The Central Government may by order direct any person specified in the order to furnish to the special auditor within such time as may be specified therein such information or additional information as may be required by the special auditor in connection with the special audit.

(6) On receipt of the report of the special auditor, the Central Government may take such action on the report as it considers necessary in accordance with the provisions of this Act or any other law for the time being in force:

Provided that if the Central Government does not take any action on the report within four months from the date of its receipt, that Government shall send to the multi-State co-operative society either a copy of, or relevant extract from, the report with its comments thereon and require the multi-State co-operative society either to circulate that copy or those extracts to the members or to have such copy or extracts read before the multi-State co-operative society at its next general meeting.

(7) The expenses of, and incidental to, any special audit under this section (including the remuneration of the special auditor) shall be determined by the Central Government which determination shall be final and paid by the multi-State co-operative society and in default of such payment, shall be recoverable from the multi-State co-operative society as an arrear of land revenue.

78. (1) The Central Registrar may, on a request from a federal co-operative to which a multi-State co-operative society is affiliated or a creditor or not less than one-third of the members of the board or not less than one-fifth of the total number of members of a multi-State co-operative society hold an inquiry or direct some person authorised by him by order

Inquiry by
Central
Registrar.

in writing in this behalf to hold an inquiry into the constitution, working and financial condition of a multi-State co-operative society;

Provided that no inquiry under this sub-section shall be held unless a notice of not less than fifteen days has been given to the multi-State co-operative society.

(2) The Central Registrar or the person authorised by him under sub-section (1) shall have the following powers, namely:—

(a) he shall at all reasonable times have free access to the books, accounts, documents, securities, cash and other properties belonging to or in the custody of the multi-State co-operative society and may summon any person in possession or responsible for the custody of any such books, accounts, documents, securities, cash or other properties to produce the same, at any place specified by him;

(b) he may, notwithstanding any bye-law specifying the period of notice for a general meeting of the multi-State co-operative society, require the officers of the society to call a general meeting of the society by giving notice of not less than seven days at such time and place at the headquarters of the society to consider such matters, as may be directed by him; and where the officers of the society refuse or fail to call such a meeting, he shall have power to call it himself;

(c) he may summon any person who is reasonably believed by him to have any knowledge of the affairs of the multi-State co-operative society to appear before him at any place at the headquarters of the society or any branch thereof and may examine such person on oath.

(3) Any meeting called under clause (b) of sub-section (2) shall have all the powers of a general meeting of the society called under the bye-laws of the society and its proceedings shall be regulated by such bye-laws.

(4) The Central Registrar shall, within a period of three months of the date of receipt of the report, communicate the report of inquiry to the multi-State co-operative society, the financial institutions, if any, to which the society is affiliated, and to the person or authority, if any, at whose instance the inquiry is made.

Inspection of
multi-State co-
operative
societies.

79. (1) The Central Registrar may, on a request from a federal co-operative to which a multi-State co-operative society is affiliated or a creditor or not less than one-third of the members of the board or not less than one-fifth of the total number of members of a multi-State co-operative society by general or special order in writing in this behalf, inspect or direct any person authorised by him by order in writing in this behalf to make an inspection into the constitution, working and financial condition of a multi-State co-operative society:

Provided that no inspection under this sub-section shall be made unless a notice of not less than fifteen days has been given to the multi-State co-operative society.

(2) (a) For the purpose of inspection under sub-section (1), the Central Registrar or the person authorised by him under that sub-section shall at all times have access to all books, accounts, papers, vouchers, securities, stock and other property of that society and may, in the event of serious irregularities discovered during inspection, take them into custody and shall have power to verify the cash balance of the society and subject to the general or special order of the Central Registrar to call a meeting of the board and also a general meeting of the society where such general meeting is, in his opinion, necessary.

(b) Every officer or member of a multi-State co-operative society shall furnish such information with regard to the working of the society as the Central Registrar or the person making such inspection may require.

(3) A copy of the report of inspection under this section shall be communicated to the multi-State co-operative society within a period of three months from the date of completion of such inspection.

Inspection of
books of indebted
multi-State co-
operative societies.

80. (1) The Central Registrar shall, on the application of a creditor of a multi-State co-operative society, inspect, or direct some person authorised by him by order in writing in this behalf to inspect, the books of the society:

Provided that no such inspection shall be made unless the applicant—

(a) satisfies the Central Registrar that the debt is a sum then due, and that he has demanded payment thereof and has not received satisfaction within a reasonable time;

(b) deposits with the Central Registrar such sum as security for the costs of the proposed inspection as the Central Registrar may require.

(2) The Central Registrar shall communicate the result of any such inspection to the creditor.

81. Where an inquiry is held under section 78 or an inspection is made under section 79, the Central Registrar may apportion the costs, or such part of the costs, as he may think fit, between the multi-State co-operative society, the members or creditors demanding an inquiry or inspection, and the officers or former officers and the members or past members of that society:

Costs of inquiry and inspection.

Provided that—

(a) no order of apportionment of the costs shall be made under this section unless the society or the person liable to pay the costs thereunder has had a reasonable opportunity of being heard;

(b) the Central Registrar shall state in writing under his own hand the grounds on which the costs are apportioned.

82. Any sum awarded by way of costs under section 81 may be recovered, on application to a magistrate having jurisdiction in the place where the person, from whom the money is claimable, actually and voluntarily resides or carries on business, and such magistrate shall recover the same as if it were a fine imposed by himself.

Recovery of costs.

83. (1) If in the course of an audit, inquiry, inspection or the winding up of a multi-State co-operative society, it is found that any person, who is or was entrusted with the organisation or management of such society or who is or has at any time been an officer or an employee of the society, has made any payment contrary to this Act, or the bye-laws or has caused any deficiency in the assets of the society by breach of trust or wilful negligence or has misappropriated or fraudulently retained any money or other property belonging to such society, the Central Registrar may, of his own motion or on the application of the board, liquidator or any creditor inquire himself or direct any person authorised by him, by an order in writing in this behalf, to inquire into the conduct of such person within a period of two years from the date of the report of the audit, inspection or inquiry or the date of the order of winding up, as the case may be:

Repayment, etc.

Provided that where the Central Registrar is satisfied that such inquiry could not be commenced during the period of two years aforesaid on account of fraud or concealment of facts, he may make or direct the inquiry to be made within such period not exceeding six years from the date of the report of the audit, inspection or inquiry or the date of the order of winding up, as he thinks fit.

(2) Where an inquiry is made under sub-section (1), the Central Registrar may, after giving the person concerned a reasonable opportunity of being heard, make an order requiring him to repay or restore the money or property or any part thereof, with interest at such rate, or to pay contribution and costs or compensation to such extent, as the Central Registrar may consider just and equitable.

CHAPTER IX

SETTLEMENT OF DISPUTES

84. (1) Notwithstanding anything contained in any other law for the time being in force, if any dispute [other than a dispute regarding disciplinary action taken by a

Reference of disputes.

multi-State co-operative society against its paid employee or an industrial dispute as defined in clause (k) of section 2 of the Industrial Disputes Act, 1947] touching the constitution, management or business of a multi-State co-operative society arises— 14 of 1947.

(a) among members, past members and persons claiming through members, past members and deceased members, or

(b) between a member, past members and persons claiming through a member, past member or deceased member and the multi-State co-operative society, its board or any officer, agent or employee of the multi-State co-operative society or liquidator, past or present, or

(c) between the multi-State co-operative society or its board and any past board, any officer, agent or employee, or any past officer, past agent or past employee, heirs or legal representatives of any deceased officer, deceased agent or deceased employee of the multi-State co-operative society, or

(d) between the multi-State co-operative society and any other multi-State co-operative society, between a multi-State co-operative society and liquidator of another multi-State co-operative society or between the liquidator of one multi-State co-operative society and the liquidator of another multi-State co-operative society,

such dispute shall be referred to arbitration.

(2) For the purposes of sub-section (1), the following shall be deemed to be disputes touching the constitution, management or business of a multi-State co-operative society, namely:—

(a) a claim by the multi-State co-operative society for any debt or demand due to it from a member or the nominee, heirs or legal representatives of a deceased member, whether such debt or demand be admitted or not;

(b) a claim by a surety against the principal debtor where the multi-State co-operative society has recovered from the surety any amount in respect of any debt or demand due to it from the principal debtor as a result of the default of the principal debtor, whether such debt or demand is admitted or not;

(c) any dispute arising in connection with the election of any officer of a multi-State co-operative society.

(3) If any question arises whether a dispute referred to arbitration under this section is or is not a dispute touching the constitution, management or business of a multi-State co-operative society, the decision thereon of the arbitrator shall be final and shall not be called in question in any court.

(4) Where a dispute has been referred to arbitration under sub-section (1), the same shall be settled or decided by the arbitrator to be appointed by the Central Registrar.

(5) Save as otherwise provided under this Act, the provisions of the Arbitration and Conciliation Act, 1996 shall apply to all arbitration under this Act as if the proceedings for arbitration were referred for settlement or decision under the provisions of the Arbitration and Conciliation Act, 1996. 26 of 1996.

Limitation.

85. (1) Notwithstanding anything contained in the Limitation Act, 1963, but subject to the specific provisions made in this Act, the period of limitation in the case of a dispute referred to arbitration shall,— 36 of 1963.

(a) when the dispute relates to the recovery of any sum including interest thereon due to a multi-State co-operative society by a member thereof, be computed from the date on which such member dies or ceases to be a member of the society;

(b) save as otherwise provided in clause (c), when the dispute relates to any act or omission on the part of any of the parties referred to in clause (b) or clause (c) or clause (d) of sub-section (1) of section 84, be six years from the date on which the act or omission, with reference to which the dispute arose, took place;

(c) when the dispute is in respect of an election of an officer of a multi-State co-operative society, be one month from the date of the declaration of the result of the election.

36 of 1963.

(2) The period of limitation in the case of any dispute, except those mentioned in sub-section (1), which are required to be referred to arbitration shall be regulated by the provisions of the Limitation Act, 1963, as if the dispute were a suit and the arbitrator a civil court.

(3) Notwithstanding anything contained in sub-sections (1) and (2), the arbitrator may admit a dispute after the expiry of the period of limitation, if the applicant satisfies the arbitrator that he had sufficient cause for not referring the dispute within such period.

CHAPTER X

WINDING UP OF MULTI-STATE CO-OPERATIVE SOCIETY

86. (1) If the Central Registrar, after audit has been conducted under section 70 or special audit has been conducted under section 77 or an inquiry has been held under section 78 or an inspection has been made under section 79, is of opinion that the society ought to be wound up, he may, after giving the society a reasonable opportunity of making its representations by order, direct it to be wound up.

Winding up of multi-State co-operative societies.

(2) The Central Registrar may, of his own motion and after giving the multi-State co-operative society a reasonable opportunity of making its representation, make an order directing the winding up of the multi-State co-operative society,—

(a) where it is a condition of the registration of the society that the society shall consist of at least fifty members and the number of members has been reduced to less than fifty; or

(b) where the multi-State co-operative society has not commenced working within a period of six months of the date of its registration or such extended period as the Central Registrar may allow in this behalf or has ceased to function in accordance with co-operative principles.

(3) The Central Registrar may cancel an order for the winding up of a multi-State co-operative society, at any time, in any case where, in his opinion, the society should continue to exist.

(4) A copy of such order shall be communicated by registered post to the multi-State co-operative society and to the financial institutions, if any, of which the society is a member.

(5) Notwithstanding anything contained in this section, no co-operative bank shall be wound up except with the previous sanction, in writing of the Reserve Bank.

(6) Notwithstanding anything contained in this section, the Central Registrar shall make an order for the winding up of a multi-State co-operative society, if the society, by a resolution passed by two-third majority of members present and voting in a general meeting decides for winding up of that society.

47 of 1961.

87. Notwithstanding anything to the contrary contained elsewhere in this Act, the Central Registrar shall make an order for the winding up of a co-operative bank, if so required by the Reserve Bank in the circumstances mentioned in section 13D of the Deposit Insurance and Credit Guarantee Corporation Act, 1961.

Winding up of co-operative bank at the direction of Reserve Bank.

Reimburse-
ment to the
Deposit
Insurance
Corporation
by liquidator.

88. Where a co-operative bank, being an insured bank within the meaning of the Deposit Insurance and Credit Guarantee Corporation Act, 1961, is wound up and the Deposit Insurance Corporation has become liable to the depositors of the insured bank under sub-section (1) of section 16 of that Act, the Deposit Insurance Corporation shall be reimbursed by the liquidator or such other person in the circumstances, to the extent and in the manner provided in section 21 of that Act.

47 of 1961.

Liquidator.

89. (1) Where the Central Registrar has made an order under section 86 for the winding up of a multi-State co-operative society, the Central Registrar may appoint a liquidator for the purpose and fix his remuneration.

(2) A liquidator shall, on appointment, take into his custody or under his control all the property, effects and actionable claims to which the multi-State co-operative society is or appears to be entitled and shall take such steps as he may deem necessary or expedient to prevent loss or deterioration of, or damage to, such property, effects and claims and he may carry on the business of the multi-State co-operative society so far as may be necessary with the previous approval of the Central Registrar.

(3) Where an appeal is preferred under clause (f) of sub-section (1) of section 99, an order for the winding up of a multi-State co-operative society made under section 86 shall not operate thereafter until the order is confirmed in appeal:

Provided that the liquidator shall continue to have custody or control of the property, effects and actionable claims mentioned in sub-section (2) and have authority to take the steps referred to in that sub-section.

(4) Where an order for the winding up of a multi-State co-operative society is set aside in appeal, the property, effects and actionable claims of the society shall re-vest in the society.

Powers of
liquidator.

90. (1) Subject to any rules made in this behalf, the whole of the assets of a multi-State co-operative society in respect of which an order for winding up has been made, shall vest in the liquidator appointed under section 89 from the date on which the order takes effect and the liquidator shall have power to realise such assets by sale or otherwise.

(2) Such liquidator shall also have power, subject to the control of the Central Registrar—

(a) to institute and defend suits and other legal proceedings on behalf of the multi-State co-operative society by the name of his office;

(b) to determine from time to time the contribution (including debts due and costs of liquidation) to be made or remaining to be made by the members or past members or by the estates or nominees, heirs or legal representatives of the deceased members or by any officers or former officers, to the assets of the multi-State co-operative society;

(c) to investigate all claims against the multi-State co-operative society and subject to the provisions of this Act, to decide questions of priority arising between claimants;

(d) to pay claims against the multi-State co-operative society, including interest up to the date of winding up according to their respective priorities, if any, in full or rateably, as the assets of the society may permit; and the surplus, if any, remaining after payment of the claims being applied in payment of interest from the date of such order of winding up at a rate fixed by him but not exceeding the contract rate in any case;

(e) to determine by what persons and in what proportions the costs of the liquidation are to be borne;

(f) to determine whether any person is a member, past member or nominee of a deceased member;

(g) to give such directions in regard to the collection and distribution of the assets of the multi-State co-operative society as may appear to him to be necessary for winding up the affairs of that society;

(h) to carry on the business of the multi-State co-operative society so far as may be necessary for the beneficial winding up of the same;

(i) to make any compromise or arrangement with creditors or persons claiming to be creditors or having or alleging to have any claim, present or future, whereby the multi-State co-operative society may be rendered liable;

(j) to make any compromise or arrangement with any person between whom and the multi-State co-operative society there exists any dispute and to refer any such dispute for decision;

(k) after consulting the members of the multi-State co-operative society, to dispose of the surplus, if any, remaining after paying the claims against the society, in such manner as may be prescribed;

(l) to compromise all calls or liabilities to calls and debts and liabilities capable of resulting in debts, and all claims, present or future, certain or contingent, subsisting or alleged to be subsisting between the multi-State co-operative society and a contributory or other debtor or person apprehending liability to the multi-State co-operative society and all questions in any way relating to or affecting the assets or the winding up of the society on such terms as may be agreed and take any security for the discharge of any such call, liability, debt or claim and give a complete discharge in respect thereof.

(3) When the affairs of a multi-State co-operative society have been wound up, the liquidator shall make a report to the Central Registrar and deposit the records of the society in such place as the Central Registrar may direct.

91. The surplus assets, as shown in the report of a liquidator of a multi-State co-operative society which is wound up,—

Disposal of surplus assets.

(a) may, if the bye-laws of the multi-State co-operative society specify the purpose for which surplus shall be utilised, be utilised by the Central Registrar for the said purpose, and

(b) if the bye-laws aforesaid do not specify the purpose, be divided by the Central Registrar with the previous sanction of the Central Government, amongst the members of such multi-State co-operative society in such manner as may be prescribed.

92. Notwithstanding anything contained in any law relating to insolvency, the contribution assessed by a liquidator shall rank next to debts due to the Central Government or a State Government or a local authority in accordance with the order of priority in insolvency proceedings.

Priority of contributions assessed by liquidator.

93. (1) The Central Registrar may, after considering the report of the liquidator made to him under sub-section (3) of section 90, order the registration of the multi-State co-operative society to be cancelled and on such cancellation, that society shall stand dissolved.

Power of Central Registrar to cancel registration of a multi-State co-operative society.

(2) An order passed under sub-section (1) shall be communicated by registered post to the president or the chairperson, as the case may be, of the multi-State co-operative society and to the financial institutions, if any, of which the society was a member.

CHAPTER XI

EXECUTION OF DECREES, ORDERS AND DECISIONS

Execution of decisions, etc. **94.** Every decision or order made under section 39 or section 40 or section 83 or section 99 or section 101 shall, if not carried out,—

(a) on a certificate signed by the Central Registrar or any person authorised by him in writing in this behalf, be deemed to be a decree of a civil court and shall be executed in the same manner as if it were a decree of such court and such decree shall be executed by the Central Registrar or any person authorised by him in writing in this behalf, by attachment and sale or sale without attachment of any property of the person or a multi-State co-operative society against whom the decision or order has been made; or

(b) where the decision or order provides for the recovery of money, be executed according to law for the time being in force for the recovery of arrears of land revenue:

Provided that any application for the recovery of any sum shall be made in such manner—

(i) to the Collector and shall be accompanied by a certificate signed by the Central Registrar or by any person authorised by him in writing in this behalf;

(ii) within twelve years from the date fixed in the decision or order and if no such date is fixed, from the date of decision or order, as the case may be; or

(c) be executed by the Central Registrar or any person authorised by him in writing in this behalf, by attachment and sale or sale without attachment of any property of the person or a multi-State co-operative society against whom the decision or order has been made.

Execution of orders of liquidator. **95.** Every order made by the liquidator under section 90 shall be executed according to the law for the time being in force for the recovery of arrears of land revenue.

Attachment before award. **96.** (1) Where the arbitrator is satisfied that a party to any reference made to him under section 84 with intent to defeat or delay the execution of any decision that may be passed thereon is about to—

(a) dispose of the whole or any part of the property; or

(b) remove the whole or any part of the property from its existing precincts,

the arbitrator may, unless adequate security is furnished, direct conditional attachment of the said property or such part thereof as he deems necessary.

(2) The attachment under sub-section (1) shall be executed by a civil court having jurisdiction in the same way as an attachment order passed by itself and shall have the same effect as such order.

Central Registrar or arbitrator or person authorised to be civil court for certain purposes. **97.** The Central Registrar or the arbitrator or any person authorised by him in writing in this behalf shall be deemed, when exercising any powers under this Act for the recovery of any amount by the attachment and sale or by sale without attachment of any property, or when passing any orders on any application made to him for such recovery or for taking a step-in-aid of such recovery, to be a civil court for the purposes of article 136 of the Schedule to the Limitation Act, 1963.

Recovery of sums due to Government. **98.** (1) All sums due from a multi-State co-operative society, or from an officer or member or past member of a multi-State co-operative society, to the Central Government or a State Government, including any cost awarded to the Central Government or the State Government, as the case may be, under any provision of this Act, may, on a certificate issued by the Central Registrar in this behalf, be recovered in the same manner as arrears of land revenue as first charge on the assets of such society or officer or member, as the case may be.

(2) Sums due from a multi-State co-operative society to the Central Government or a State Government and recoverable under sub-section (1) may be recovered firstly from the property of the society and secondly from the members, past members or the estates of deceased members, subject to the limit of their liability:

Provided that the liability of past members and the estate of deceased members shall in all cases be subject to the provisions of section 37.

CHAPTER XII

APPEALS AND REVIEW

99. (1) Subject to the provisions of section 100, an appeal shall lie under this section against— Appeals.

(a) an order made by the Central Registrar under sub-section (3) of section 7 refusing to register a multi-State co-operative society;

(b) an order made by the Central Registrar under sub-section (9) of section 11 refusing to register an amendment of the bye-laws of a multi-State co-operative society;

(c) a decision of a multi-State co-operative society refusing or deemed to be refusing under sub-section (4) of section 25 to admit any person as a member of the society who is otherwise duly qualified for membership under the bye-laws of the society;

(d) an order made by the Central Registrar under section 81 apportioning the costs of an inquiry held under section 78 or an inspection made under section 80;

(e) an order made by the Central Registrar under sub-section (2) of section 83;

(f) an order made by the Central Registrar under section 86 directing the winding up of a multi-State co-operative society;

(g) an order made by the liquidator of a multi-State co-operative society under section 90.

(2) An appeal against any decision or order under sub-section (1) shall be made within sixty days from the date of such decision or order to the prescribed appellate authority.

(3) The appellate authority may, if satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the period of sixty days, admit the appeal within such further period as that authority may deem fit.

(4) In disposing of an appeal under this section, the appellate authority may, after giving the parties a reasonable opportunity of making their representation, pass such order thereon as that authority may deem fit.

(5) The decision or order of the appellate authority on appeal shall be final.

100. Notwithstanding anything contained in this Act, where, with the previous sanction in writing of, or on requisition by, the Reserve Bank, a co-operative bank—

No appeal in certain cases.

(a) is being wound up; or

(b) in respect of which a scheme of amalgamation or reorganisation is given effect to,

no appeal there against shall lie or be permissible, and the sanction or requisition of the Reserve Bank shall not be liable to be called in question.

101. (1) The appellate authority referred to in section 99, may, on the application of any party, review its own order in any case and pass in reference thereto such order as it thinks fit: Review.

Provided that no such application shall be entertained unless the appellate authority is satisfied that there has been a discovery of new and important matter or evidence which after exercise of due diligence was not within the knowledge of the applicant or could not be produced by him at the time when the order was made or that there has been some mistake or error apparent on the face of the record or for any other sufficient reason:

Provided further that no such order shall be made under this sub-section unless notice has been given to all interested parties and they have been afforded a reasonable opportunity of being heard.

(2) An application for review under sub-section (1) by any party shall be made within thirty days from the date of communication of the order of the appellate authority sought to be reviewed.

Interlocutory orders..

102. Where an appeal is made under section 99, the appellate authority may, in order to prevent the ends of justice being defeated, make such interlocutory orders, including an order of stay pending the decision of the appeal as such authority may deem fit.

CHAPTER XIII

SOCIETIES WHICH BECOME MULTI-STATE CO-OPERATIVE SOCIETIES CONSEQUENT ON REORGANISATION OF STATES

Co-operative societies functioning immediately before reorganisation of States.

103. (1) Where, by virtue of the provisions of Part II of the State Reorganisation Act, 1956 or any other enactment relating to reorganisation of States, any co-operative society which immediately before the day on which the reorganisation takes place, had its objects confined to one State becomes, as from that day, a multi-State co-operative society, it shall be deemed to be a multi-State co-operative society registered under the corresponding provisions of this Act and the bye-laws of such society shall, in so far as they are not inconsistent with the provisions of this Act, continue to be in force until altered or rescinded. 37 of 1956.

(2) If it appears to the Central Registrar or any officer authorised in this behalf by the Central Government (hereafter in this section referred to as the authorised officer) that it is necessary or expedient to reconstitute or reorganise any society referred to in sub-section (1), the Central Registrar or the authorised officer, as the case may be, may, with the previous approval of the Central Government, place before a meeting of the general body of that society, held in such manner as may be prescribed, a scheme for the reconstitution or reorganisation, including proposals regarding—

(a) the formation of new multi-State co-operative societies and the transfer thereto in whole or in part, of the assets and liabilities of that society; or

(b) the transfer, in whole or in part, of the assets and liabilities of that society to any other multi-State co-operative society in existence immediately before the date of that meeting of the general body (hereafter in this section referred to as the existing multi-State co-operative society).

(3) If the scheme is sanctioned by a resolution passed by a majority of the members present at the said meeting, either without modifications or with modifications to which the Central Registrar or the authorised officer agrees, he shall certify the scheme and upon such certification, the scheme shall, notwithstanding anything to the contrary contained in any law, regulation or bye-laws for the time being in force, be binding on all the societies affected by the scheme, as well as the shareholders and creditors of all such societies.

(4) If the scheme is not sanctioned under sub-section (3), the Central Registrar or the authorised officer may refer the scheme to such Judge of the appropriate High Court, as may be nominated in this behalf by the Chief Justice thereof, and the decision of that Judge in regard to the scheme shall be final and shall be binding on all the societies affected by the scheme as well as the shareholders and creditors of all such societies.

Explanation.—For the purposes of this sub-section, “appropriate High Court” means the High Court within the local limits of whose jurisdiction the principal place of business of the multi-State co-operative society is situated.

(5) Notwithstanding anything contained in this section, where a scheme under sub-section (2) includes any proposal regarding the transfer of the assets and liabilities of any multi-State co-operative society referred to in clause (b) thereof, the scheme shall not be binding on such multi-State co-operative society or the shareholders and creditors thereof, unless the proposal regarding such transfer is accepted by that multi-State co-operative society by a resolution passed by a majority of the members present at a meeting of its general body.

CHAPTER XIV

OFFENCES AND PENALTIES

104. (1) A multi-State co-operative society or an officer or member thereof wilfully making a false return or furnishing false information, or any person wilfully or without any reasonable excuse disobeying any summons, requisition or lawful written order issued under the provisions of this Act, or wilfully not furnishing any information required from him by a person authorised in this behalf under the provisions of this Act, shall be punishable with fine which shall not be less than two thousand rupees and which may extend to ten thousand rupees. Offences and penalties.

(2) Any employer who, without sufficient cause, fails to pay to a multi-State co-operative society the amount deducted by him under section 60 within a period of fourteen days from the date on which such deduction is made shall, without prejudice to any action that may be taken against him under any other law for the time being in force, be punishable with fine which may extend to five thousand rupees.

(3) Any officer or custodian who wilfully fails to hand over custody of books, accounts, documents, records, cash, security and other property belonging to a multi-State co-operative society of which he is an officer or custodian, to a person entitled under section 54, or section 70, or section 78, or section 79, or section 89 shall be punishable with fine which may extend to two thousand rupees and in the case of a continuing breach, with a further fine which may extend to five thousand rupees for every day during which the breach is continued after conviction for the first such breach.

(4) Whoever, before, during or after the election of delegates under the proviso to sub-section (1) of section 38 or election of members of the board,—

(a) fraudulently defaces or fraudulently destroys any nomination paper; or

(b) fraudulently defaces, destroys or removes any list, notice or other document affixed by or under the authority of a returning officer; or

(c) fraudulently defaces or fraudulently destroys any ballot paper or the official mark on any ballot paper or any declaration of identity; or

(d) without due authority supplies any ballot paper to any person or receives any ballot paper from any person or is in possession of any ballot paper; or

(e) fraudulently puts into any ballot box anything other than the ballot paper which he is authorised by law to put in; or

(f) without due authority destroys, takes, opens or otherwise interferes, with any ballot box or ballot papers then in use for the purposes of the election; or

(g) fraudulently or without due authority, as the case may be, attempts to do any of the foregoing acts or wilfully aids or abets the doing of any such acts;

(h) offers any gift or promises to offer any gratification to any person with the object, directly or indirectly, of including—

(i) a person to stand or not to stand as, or to withdraw or not to withdraw from, being a candidate at an election; or

(ii) a member to vote or refrain from voting at an election, or as a reward to a person for having so stood or not stood or for having withdrawn or not having withdrawn his candidature; or

(iii) a member for having voted or refrained from voting,

shall be punishable with imprisonment for a term which may extend to six months or with fine or with both.

Cognizance of offences.

105. (1) No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence under this Act.

(2) No prosecution for offences under section 104 shall be instituted except on a complaint filed in writing by a member of a multi-State co-operative society or by the Central Registrar in the competent court.

CHAPTER XV

MISCELLANEOUS

Copies of bye-laws, etc., to be open to inspection.

106. Every multi-State co-operative society shall keep a copy of the rules and its bye-laws and also a list of its members, open to inspection free of charge at all reasonable times, at the registered address of the society.

Place of keeping and inspection of registers and returns.

107. (1) The register of members commencing from the date of the registration of multi-State co-operative society, the index of members, the register of debenture holders, and copies of all annual returns prepared together with the copies of certificates and documents, shall be kept at the registered office of the multi-State co-operative society.

(2) The registers, indexes, returns and copies of certificates and other documents referred to in sub-section (1) shall be open during business hours (subject to such reasonable restrictions, as the multi-State co-operative society may impose, so that not less than two hours in each day are allowed for inspection) to the inspection—

(a) of any member or debenture holder, without fee; and

(b) of any other person, on payment of such sum as may be prescribed for each inspection.

Inspection of books of account, etc., of multi-State co-operative society.

108. (1) The books of account and other books and papers of every multi-State co-operative society shall be open to inspection during business hours—

(i) by the Central Registrar, or

(ii) by such officer of the Government as may be authorised by the Central Government in this behalf:

Provided that such inspection may be made without giving any previous notice to that society or any officer thereof;

(iii) by the members of the multi-State co-operative society.

(2) It shall be the duty of every director, other officer or employee of the multi-State co-operative society to produce to the person making inspection under sub-section (1), all such books of account and other books and papers of the multi-State co-operative society in his custody or control and to furnish him with any statement, information or explanation relating to the affairs of such society as the said person may require of him within such time and at such place as he may specify.

(3) It shall also be the duty of every director, other officer or employee of the multi-State co-operative society to give to the person making inspection under this

section all assistance in connection with the inspection which the multi-State co-operative society may be reasonably expected to give.

(4) The person making the inspection under this section may, during the course of inspection,—

(i) make or cause to be made copies of books of account and other books and papers, or

(ii) place or cause to be placed any marks of identification thereon in token of the inspection having been made.

(5) Notwithstanding anything contained in any other law for the time being in force or any contract to the contrary, the Central Registrar or an officer authorised under clause (ii) of sub-section (1), making an inspection under this section shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely:—

(i) the discovery and production of books of account and other documents, at such place and such time as may be specified by such person;

(ii) summoning and enforcing the attendance of persons and examining them on oath;

(iii) inspection of any books, registers and other documents of the multi-State co-operative society at any place.

(6) Where an inspection of the books of account and other books and papers of the multi-State co-operative society has been made under this section, the Central Registrar or an officer authorised under clause (ii) of sub-section (1), making the inspection shall make a report to the Central Government.

109. At every annual general meeting of a multi-State co-operative society, the board shall lay before the multi-State co-operative society—

Annual
accounts and
balance-sheet.

(a) a balance-sheet as at the end of every co-operative year; and

(b) a profit and loss account for that year.

110. (1) Every multi-State co-operative society shall cause minutes of all proceedings of every general meeting and of all proceedings of every meeting of its board or of every committee of the board, to be kept by making within thirty days of the conclusion of every such meeting concerned, entries thereof in books kept for that purpose with their pages consecutively numbered.

Minutes of
proceedings of
general
meetings and
of board and
other
meetings.

(2) Each page of every such book shall be initialed or signed and the last page of the record of proceedings of each meeting in such books shall be dated and signed—

(a) in the case of minutes of proceedings of a meeting of the board or of a committee thereof, by the chairperson of the said meeting or the chairperson of the next succeeding meeting;

(b) in the case of minutes of proceedings of a general meeting, by the chairperson of the same meeting within the aforesaid period of thirty days or in the event of the death or inability of that chairperson within that period, by a member of the board duly authorised by the board for the purpose.

(3) In no case the minutes of proceedings of a meeting shall be attached to any such books as aforesaid by pasting or otherwise.

(4) The minutes of each meeting shall contain a fair and correct summary of the proceedings thereat.

(5) All appointments of officers made at any of the meetings aforesaid shall be included in the minutes of the meeting.

(6) In the case of a meeting of the board or of a committee of the board, the minutes shall also contain—

(a) the names of the members of the board present at the meeting; and

(b) in the case of each resolution passed at the meeting, the names of the members of the board, if any, dissenting from, or not concurring in, the resolution.

(7) Nothing contained in sub-sections (1) to (6) shall be deemed to require the inclusion in any such minutes of any matter which, in the opinion of the chairperson of the meeting—

(a) is, or could reasonably be regarded as, defamatory of any person;

(b) is irrelevant or immaterial to the proceedings; or

(c) is detrimental to the interests of the multi-State co-operative society.

Explanation.—The chairperson shall exercise an absolute discretion in regard to the inclusion or non-inclusion of any matter in the minutes on the grounds specified in this sub-section.

Minutes to be evidence.

111. Minutes of meetings kept in accordance with the provisions of section 110 shall be evidence of the proceedings recorded therein.

Presumptions to be drawn where minutes duly drawn and signed.

112. Where minutes of the proceedings of any general meeting of the multi-State co-operative society or of any meeting of its board or a committee of the board have been kept in accordance with the provisions of section 110, then, until the contrary is proved, the meeting shall be deemed to have been duly called and held, and all proceedings thereat to have duly taken place, and in particular, all appointments of directors or liquidators made at the meeting shall be deemed to be valid.

Inspection of minutes book of general meetings.

113. The books containing the minutes of the proceedings of any general meeting of a multi-State co-operative society shall—

(a) be kept at the registered office of that society, and

(b) be open, during business hours, to the inspection of any member of that society.

Liquidator to be public servant.

114. Any person appointed as liquidator under the provisions of this Act shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

45 of 1860.

Notice necessary in suits.

115. No suit shall be instituted against a multi-State co-operative society or any of its officers in respect of any act touching the constitution, management or the business of the society until the expiration of ninety days next after notice in writing has been delivered to the Central Registrar or left at his office, stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims, and the plaintiff shall contain a statement that such notice has been so delivered or left.

Power to amend Second Schedule.

116. (1) If the Central Government is satisfied that any multi-State co-operative society should be designated as a national co-operative society or any national co-operative society specified in the Second Schedule should be omitted from the said Schedule, it may, by notification, amend the said Schedule so as to include therein such multi-State co-operative society or exclude therefrom such national co-operative society, and thereupon the said Schedule shall be deemed to have been amended accordingly.

(2) A copy of every notification under sub-section (1) shall be laid before each House of Parliament as soon as may be after it is made.

117. (1) Save as otherwise provided in this Act, no court shall have jurisdiction in respect of—

Bar of jurisdiction of courts.

(a) the registration of a multi-State co-operative society or its bye-laws or of an amendment of the bye-laws;

(b) any matter concerning the winding up and the dissolution of a multi-State co-operative society.

(2) While a multi-State co-operative society is being wound up, no suit or other legal proceedings relating to the business of such society shall be proceeded with or instituted against the liquidator or against the society or any member thereof, except by leave of the Central Registrar and subject to such terms and conditions as he may impose.

(3) Save as otherwise provided in this Act, no decision or order made under this Act shall be questioned in any court.

118. No suit, prosecution or other legal proceedings shall lie against the Central Registrar or, any person subordinate to him or acting on his authority or against any other person, in respect of anything in good faith done or purporting to have been done under this Act.

Indemnity.

119. Notwithstanding anything contained to the contrary in any law relating to co-operative societies in force in a State, a multi-State co-operative society, not being a co-operative bank, may open branches or places of business in any place in India.

Opening of branches.

120. Every year within six months of the closure of the accounting year every multi-State co-operative society shall file the following returns with the Central Registrar, namely:—

Filing of returns.

(a) annual report of the activities;

(b) audited statements of accounts;

(c) plan for surplus disposal as approved by the general body;

(d) list of amendments to the bye-laws of the multi-State co-operative society;

(e) declaration regarding date of holding of general body meeting and conduct of elections where due;

(f) any other information required by the Central Registrar in pursuance of any of the provisions of this Act.

1 of 1956.

54 of 1969.

121. (1) The provisions of the Companies Act, 1956 and the Monopolies and Restrictive Trade Practices Act, 1969 shall not apply to the multi-State co-operative societies.

Certain Acts not to apply.

54 of 1969.

(2) The multi-State co-operative societies registered or deemed to be registered under the provisions of this Act shall not indulge in monopolistic and restrictive trade practices as defined in the Monopolies and Restrictive Trade Practices Act, 1969.

122. If the Central Government is satisfied that in the public interest or for the purposes of securing proper implementation of co-operative production and other developmental programmes approved or undertaken by the Central Government or to secure proper management of the business of the specified multi-State co-operative societies generally or for preventing the affairs of such society being conducted in a manner detrimental to the interests of the members, any depositors or creditors thereof, it is necessary to issue directions to any class of specified multi-State co-operative societies generally or to any specified multi-State co-operative society or societies in particular, the Central Government may issue directions to it or to them, from time to time, and all such specified multi-State co-operative society or the societies concerned, as the case may be, shall be bound to comply with such directions.

Central Government's power to give directions to specified multi-State co-operative societies in public interest.

Supersession
of board of
specified
multi-State
co-operative
society.

123. (1) If in the opinion of the Central Government, the board of any specified multi-State co-operative society is persistently making default or is negligent in the performance of the duties imposed on it by this Act or the rules or the bye-laws or has committed any act which is prejudicial to the interests of the society or its members, or has omitted or failed to comply with any directions given to it under section 122 or that there is a stalemate in the constitution or functions of the board, the Central Government may, after giving the board an opportunity to state its objections, if any, and considering the objections, if received, by order in writing, remove the board and appoint one or more administrators, who need not be members of the society, to manage the affairs of the society for such period not exceeding six months, as may be specified in the order which period may, at the discretion of the Central Government, be extended from time to time; so, however, that the aggregate period does not exceed one year:

Provided that in the case of a co-operative bank, the provisions of this sub-section shall have effect as if for the words "one year", the words "two years" had been substituted.

(2) The Central Government may fix such remuneration for the administrators, as it may think fit and the remuneration shall be paid out of the funds of the specified multi-State co-operative society.

(3) The administrator shall, subject to the control of the Central Government and to such instructions as it may from time to time give, have power to exercise all or any of the functions of the board or of any officer of the specified multi-State co-operative society and take all such actions as may be required in the interests of the society.

(4) Save as otherwise provided in sub-section (5), the administrator shall, before the expiry of his term of office, arrange for the constitution of a new board in accordance with the bye-laws of the specified multi-State co-operative society.

(5) If, at any time during the period the administrator is in office, the Central Government considers it necessary or expedient so to do, it may, by order in writing giving reasons therefor, direct the administrator to arrange for the constitution of a new board for such specified multi-State co-operative society in accordance with the bye-laws of such society and immediately on the constitution of such board, the administrator shall hand over the management of such society to such newly constituted board and cease to function.

(6) Where a specified multi-State co-operative society is indebted to any financial institution, the Central Government shall, before taking any action, under sub-section (1) in respect of that society, consult the financial institution.

Explanation.—For the purposes of sections 122 and 123, "specified multi-State co-operative society" means any multi-State co-operative society in which not less than fifty-one per cent, of the paid-up share capital, or of total shares, is held by the Central Government.

Power to
make rules.

124. (1) The Central Government may, by notification, make rules to carry out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the form to be used, the particulars to be given and the conditions to be complied with in making of applications under section 6 for the registration of a multi-State co-operative society and the procedure in the matter of such applications;

(b) the matters in respect of which a multi-State co-operative society may make bye-laws under sub-section (2) of section 10;

(c) the manner in which the order of refusal to register any amendment of the bye-laws shall be communicated under sub-section (9) of section 11;

(d) the manner in which a multi-State co-operative society shall have a principal place of business and registered address under section 14;

(e) the procedure and conditions for change in the extent of the liability of a multi-State co-operative society under section 16;

(f) the manner in which order of refusal to register an amendment of bye-laws shall be communicated under sub-section (4) of section 22;

(g) the classification of federal co-operative and other terms and conditions applicable to in under sub-section (3) of section 23;

(h) the restriction on holding the share capital of the society other than a member referred to in section 33;

(i) the constitution and powers of smaller body representing the general body under the proviso to sub-section (1) of section 38;

(j) the period within which annual general meeting be called and the procedure at such meetings and the powers to be exercised by such meeting under section 39;

(k) the election of members of the board under sub-section (2) of section 45 through secret ballot;

(l) the nomination of members under the second proviso to sub-section (1) of section 48;

(m) the additional measures and acts which may be taken or, as the case may be, done by the board under section 49;

(n) the salary and allowances payable to and other terms and conditions of the Chief Executive under sub-section (3) of section 51;

(o) the conditions subject to which the board may constitute an Executive Committee and other committees or sub-committees under sub-section (1) of section 53;

(p) the persons by whom and the form in which copies of entries in books of multi-State co-operative societies may be certified under section 58 and the charges to be levied for the supply of such copies;

(q) providing aid to multi-State co-operative societies on certain terms and conditions under clause (g) of section 61;

(r) the conditions under which profits may be distributed to the members of a multi-State co-operative society and the maximum rate of dividend which may be paid by the multi-State co-operative societies under section 63;

(s) establishment of contributory provident fund under sub-section (1) of section 69;

(t) the manner of disposing of the surplus under clause (k) of sub-section (2) of section 90;

(u) the manner in which surplus assets be divided by the Central Registrar with the previous sanction of the Central Government under clause (b) of section 91;

(v) the appellate authority to be specified under sub-section (2) of section 99;

(w) the procedure under section 103 for reconstitution and reorganisation of societies which became the multi-State co-operative societies consequent on reorganisation of States;

(x) the inspection of records of the society on payment of fees under clause (b) of sub-section (2) of section 107;

(y) any other matter which is required to be, or may be, prescribed;

(3) Every rule made under this section shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Power to
remove
difficulties.

125. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as may appear to be necessary for removing the difficulty:

Provided that no order shall be made under this section after the expiry of two years from the commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

Repeal and
saving.

126. (1) The Multi-State Co-operative Societies Act, 1984 is hereby repealed. 51 of 1984.

(2) Without prejudice to the provisions contained in the General Clauses Act, 1897 with respect to repeals, any notification, rule, order, requirement, registration, certificate, notice, decision, direction, approval, authorisation, consent, application, request or thing made, issued, given or done under the Multi-State Co-operative Societies Act, 1984 shall, if in force at the commencement of this Act, continue to be in force and have effect as if made, issued, given or done under the corresponding provisions of this Act. 10 of 1897. 51 of 1984.

(3) Every multi-State co-operative society, existing immediately before the commencement of this Act which has been registered under the Co-operative Societies Act, 1912 or under any other Act relating to co-operative societies in force, in any State or in pursuance of the provisions of the Multi-unit Co-operative Societies Act, 1942 or the Multi-State Co-operative Societies Act, 1984, shall be deemed to be registered under the corresponding provisions of this Act, and the bye-laws of such society shall, in so far as they are not inconsistent with the provisions of this Act, or the rules, continue to be in force until altered or rescinded. 2 of 1912. 6 of 1942. 51 of 1984.

(4) All appointments, rules and orders made, all notifications and notices issued and all suits and other proceedings instituted under any of the Acts referred to in subsection (1) shall, in so far as they are not inconsistent with the provisions of this Act, be deemed to have been respectively made, issued and instituted under this Act, save that an order made cancelling the registration of a multi-State co-operative society shall be deemed, unless the society has already been finally liquidated, to be an order made under section 86 for its being wound up.

(5) The provisions of this Act shall apply to—

(a) any application for registration of a multi-State co-operative society;

(b) any application for registration of amendment of bye-laws of a multi-State co-operative society,

pending at the commencement of this Act and to the proceedings consequent thereon and to any registration granted in pursuance thereof.

(6) Save as otherwise provided in this Act, any legal proceeding pending in any court or before the Central Registrar or any other authority at the commencement of this Act shall be continued to be in that court or before the Central Registrar or that authority as if this Act had not been passed.

THE FIRST SCHEDULE

[See section 3(g)]

CO-OPERATIVE PRINCIPLES

1. Voluntary and Open Membership.—Co-operatives are voluntary organisations, open to all persons capable of using their services and willing to accept the responsibilities of membership, without discrimination on bases of gender, social inequality, racial, political ideologies or religious consideration.

2. Democratic Member Control.—Co-operatives are democratic organisations controlled by their members, who actively participate in setting their policies and decision making. Elected representatives of these co-operatives are responsible and accountable to their members.

3. Member's Economic Participation.—Members contribute equitably and control the capital of their Co-operative democratically. At least a part of the surplus arising out of the economic results would be the common property of the co-operatives. The remaining surplus could be utilised benefiting the members in proportion to their share in the Co-operative.

4. Autonomy and Independence.—Co-operatives are autonomous, self-help organisations controlled by their members. If co-operatives enter into agreement with other organisations including Government or raise capital from external sources, they do so on terms that ensure their democratic control by members and maintenance of Co-operative autonomy.

5. Education, Training and Information.—Co-operatives provide education and training to their members, elected representatives and employees so that they can contribute effectively to the development of their Co-operatives. They also make the general public, particularly young people and leaders aware of the nature and benefits of co-operation.

6. Co-operation among Co-operatives.—Co-operatives serve their members most effectively and strengthen the co-operative movement, by working together through available local, regional, national and international structures.

7. Concern for Community.—While focusing on the needs of their members, co-operatives work for the sustainable development of communities through policies accepted by their members.

THE SECOND SCHEDULE

[See sections 3(r) and 116]

LIST OF NATIONAL CO-OPERATIVE SOCIETIES

1. National Co-operative Land Development Banks Federation Limited, Mumbai.
2. National Federation of State Co-operative Banks Limited, Mumbai.
3. National Co-operative Union of India Limited, New Delhi.
4. National Agricultural Co-operative Marketing Federation of India Limited, New Delhi.
5. National Co-operative Consumer's Federation of India Limited, New Delhi.
6. National Federation of Co-operative Sugar Factories Limited, New Delhi.
7. National Federation of Industrial Co-operative Limited, New Delhi.
8. National Co-operative Housing Federation Limited, New Delhi.
9. Indian Farmer's Fertiliser Co-operative Limited, New Delhi.
10. All Indian Federation of Co-operative Spinning Mills Limited, Mumbai.
11. All Indian Industrial Co-operative Banks Federation Limited, Bangalore.
12. National Co-operative Dairy Federation of India Limited, Anand.
13. Petrofils Co-operative Limited, Vadodara.
14. National Heavy Engineering Co-operative Limited, Pune.
15. All Indian Handloom Fabrics Marketing Co-operative Society Limited, New Delhi.
16. National Federation of Urban Co-operative Banks and Credit Societies Limited, New Delhi.
17. Krishak Bharati Co-operative Limited, New Delhi.
18. National Federation of Fishermen's Co-operative Limited, New Delhi.
19. National Federation of Labour Co-operative Limited, New Delhi.
20. National Co-operative Tobacco Grower's Federation, Anand.
21. Tribal Co-operative Marketing Development Federation of India Limited, New Delhi.

Sd/-

Dr. SUBHASH C. JAIN,

Secretary to the Government of India.

By order and in the name of the Governor of Gujarat,

V. M. KOTHARE,

Secretary to Government.



सत्यमेव जयते

The Gujarat Government Gazette EXTRAORDINARY

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PART - VI

Acts of Parliament and Ordinances Promulgated by the President LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT

Sachivalaya, Gandhinagar, 21th November, 2002.

No. : RPB/59/2002/ACT-4002/E : The following Act of Parliament is republished for general information :-

GOVERNMENT OF INDIA

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS,

(Legislative Department),

New Delhi, the 7th August, 2002/Sravana 16, 1924 (Saka)

The following Act of Parliament received the assent of the President on the 7th August, 2002 and is hereby published for general information :-

THE GENERAL INSURANCE BUSINESS (NATIONALISATION) AMENDMENT ACT, 2002

AN ACT

(Act No. 40 of 2002)

(7th August, 2002)

further to amend the General Insurance Business (Nationalisation) Act, 1972.

BE it enacted by Parliament in the Fifty-third Year of the Republic of India as follows:—

1. (1) This Act may be called the General Insurance Business (Nationalisation) Amendment Act, 2002.

Short title and
commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

57 of 1972.

2. In section 9 of the General Insurance Business (Nationalisation) Act, 1972 (hereinafter referred to as the principal Act),—

Amendment of
section 9.

(a) in sub-section (1), the following proviso shall be inserted, namely:—

‘Provided that on and from the commencement of the General Insurance Business (Nationalisation) Amendment Act, 2002, the provisions of this sub-section shall have effect as if for the words “superintending, controlling and carrying on the business of general

insurance", the words "carrying on re-insurance business" had been substituted.;

(b) in sub-section (2), the following proviso shall be inserted, namely:—

"Provided that the Central Government may, by notification, increase or reduce the authorised capital or subscribed capital, as the case may be, as it deems fit."

Insertion of new section 10A.

3. After section 10 of the principal Act, the following section shall be inserted, namely:—

Transfer to Central Government of shares vested in Corporation.

"10A. All the shares in the capital of the acquiring companies, being—

(a) the National Insurance Company Limited;

(b) the New India Assurance Company Limited;

(c) the Oriental Insurance Company Limited;

(d) the United India Insurance Company Limited,

and vested in the Corporation before the commencement of the General Insurance Business (Nationalisation) Amendment Act, 2002 shall, on such commencement, stand transferred to the Central Government."

Amendment of section 18.

4. In section 18 of the principal Act,—

(a) in sub-section (1), after clause (e), the following proviso shall be inserted, namely:—

"Provided that all the functions of the Corporation specified in this sub-section, on and from the commencement of the General Insurance Business (Nationalisation) Amendment Act, 2002, shall be performed by the Central Government.;"

(b) in sub-section (2), for the word "Corporation", the words "Central Government" shall be substituted.

Amendment of section 19.

5. In section 19 of the principal Act, in sub-section (3), for the word "Corporation", the words, brackets and figures "Central Government or the Insurance Regulatory and Development Authority established under sub-section (1) of section 3 of the Insurance Regulatory and Development Authority Act, 1999" shall be substituted.

41 of 1999.

Amendment of section 22.

6. In section 22 of the principal Act, for the words "The Corporation may at any time transfer any officer", the words "The Central Government or any person authorised by it may at any time transfer any officer" shall be substituted.

Amendment of section 24A.

7. In section 24A of the principal Act, the following proviso shall be inserted, namely:—

"Provided that the Corporation shall, on and from the commencement of the General Insurance Business (Nationalisation) Amendment Act, 2002, cease to carry on general insurance business."

8. In section 39 of the principal Act, in sub-section (2), for clause (b), the following clauses shall be substituted, namely:— Amendment of
section 39.

“(b) the conditions, if any, subject to which the Corporation shall carry on re-insurance business;

(ba) the conditions, if any, subject to which the acquiring companies shall carry on general insurance business.”.

Sd/-

Dr. SUBHASH C. JAIN,
Secretary to the Government of India.

By order and in the name of the Governor of Gujarat,

V. M. KOTHARE,
Secretary to Government.

GOVERNMENT CENTRAL PRESS, GANDHINAGAR



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PART - VI

Acts of Parliament and Ordinances Promulgated by the President

LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT

Sachivalaya, Gandhinagar, 21st November, 2002.

No. : RPB/63/2002/ACT-4402/E : The following Act of Parliament is republished for general information :-

GOVERNMENT OF INDIA

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS,

(Legislative Department),

New Delhi, the 12th August, 2002/Sravana 21, 1924 (Saka)

The following Act of Parliament received the assent of the President on the 12th August, 2002 and is hereby published for general information :-

THE COAST GUARD (AMENDMENT) ACT, 2002.

AN ACT

(Act No. 44 of 2002)

(12th August, 2002)

Further to amend the Coast Guard Act, 1978.

BE it enacted by Parliament in the Fifty-third Year of the Republic of India as follows:—

1. This Act may be called the Coast Guard (Amendment) Act, 2002.
2. In section 2 of the Coast Guard Act, 1978 (hereinafter referred to as the principal Act), in clause (w), for the words "or a *Sahayak Engineer*", the words "a *Sahayak Engineer* or a *Pradhan Yantrik*" shall be substituted.
3. In section 25 of the principal Act, for sub-section (2), the following shall be substituted, namely:—

"(2) Every person who deserts or attempts to desert the Coast Guard shall, on conviction by a Coast Guard Court, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned and in every such case he shall forfeit,—

(a) all pay, salvage, prize money and allowances that have been earned by him;

Short title.

Amendment of section 2.

Amendment of section 25.

(b) pension and gratuity, medals and decorations that have been granted to him; and

(c) all clothes and effects which he may have left on board the ship or the place from which he deserted,

unless the Tribunal by which he is tried or the Central Government or the Director-General otherwise directs.

Explanation.—For the purposes of this sub-section, all pay, salvage, prize money and allowances shall be deemed to have been earned by a person when such pay, salvage, prize money and allowances have become due but have not been paid to him.”

Amendment
of section 51.

4. In section 51 of the principal Act,—

(i) in sub-section (1), for the words “within three years from the commission of such offence” occurring at the end, the following shall be substituted, namely:—

“within a period of three years from the commission of such offence and such period shall commence,—

(a) on the date of the offence; or

(b) where the commission of the offence was not known to the person aggrieved by the offence or to the authority competent to initiate action, the first day on which such offence comes to the knowledge of such person or authority; or

(c) where it is not known by whom the offence was committed, on the first day on which the identity of the offender becomes known to the person aggrieved by the offence or to the authority competent to initiate action, whichever is earlier.

Explanation.—For the purposes of this sub-section, in the computation of the period of time mentioned in this sub-section, any time spent by such person, as a prisoner of war in the enemy territory, or in evading arrest, after the commission of the offence, shall be excluded.”;

(ii) after sub-section (1), the following sub-section shall be inserted, namely:—

“(1A) Where a proceeding in respect of an offence has been stayed by an injunction or an order of a court, then, in computing the period of limitation under this section, the period of the continuance of the injunction or order, the day on which it was issued or made, and the day on which it was withdrawn shall be excluded.”.

Amendment
of section 52.

5. In section 52 of the principal Act, in sub-section (2), for the words “within six months after he has ceased to be subject of this Act”, the following shall be substituted, namely:—

“within a period of two years after he has ceased to be subject to this Act; and in computing such period, the time during which such person has avoided arrest by absconding or concealing himself or where a proceeding in respect of an offence has been stayed by an injunction or order, the period of the continuance of the injunction or order, the day on which it was issued or made and the day on which it was withdrawn, shall be excluded”.

Amendment
of section 56.

6. In section 56 of the principal Act, after the words and figures “manner stated in section 57”, the words, figures and letter “or section 57A” shall be inserted.

Insertion of
new section
57A.

7. After section 57 of the principal Act, the following section shall be inserted, namely:—

Punishment
for officers
below the
rank of Com-
mandant.

“57A. (1) The Director-General or an officer not below the rank of Deputy Inspector-General who is appointed as Commander of a region or such other officer as is, with the consent of the Central Government, specified by the Director-General, may in the prescribed manner proceed against an officer below the rank of

Commandant, who is charged with an offence under this Act and award such person one or more of the following punishments, that is to say,—

(a) forfeiture of seniority of rank or in the case of any of them whose promotion depends upon length of service, forfeiture of service for the purpose of promotion, for a period not exceeding twelve months, but subject to the right of the accused, previous to the award, to elect to be tried by a Coast Guard Court;

(b) forfeiture of seniority of rank, or in the case of any of them whose promotion depends upon length of service, forfeiture of service for the purpose of promotion for a period not exceeding six months, but subject to the right of the accused, previous to the award, to elect to be tried by a Coast Guard Court;

(c) mulcts of pay and allowances;

(d) severe reprimand;

Provided that no punishment specified in clause (a) shall be inflicted by an officer other than the Director-General:

Provided further that no punishment specified in clause (b) shall be inflicted by an officer below the rank of Deputy Inspector-General who is appointed as the Commander of a region.”

8. In section 58 of the principal Act, after sub-section (7), the following sub-section shall be inserted, namely:—

Amendment
of section 58

“(8) Where mulcts of pay and allowances are awarded for absence without leave, the absence shall be treated as regularised for all purposes.”

9. In section 86 of the principal Act, in sub-section (7), after the words “Assistant Chemical Examiner to Government”, the words “or any of the Government scientific experts, namely, the Chief Inspector of the Explosives, the Director of the Fingerprint Bureau, the Director, Haffkeine Institute, Mumbai, the Director of a Central Forensic Science Laboratory or a State Forensic Science Laboratory and the Serologist to the Government” shall be inserted.

Amendment
of section 86

10. In section 87 of the principal Act, in sub-section (1), after the word and figures “award of punishment under section 57”, the words, figures and letter “or section 57A” shall be inserted.

Amendment
of section 87

11. In section 123 of the principal Act, in sub-section (2), after clause (f), the following clause shall be inserted, namely:—

Amendment
of section
123.

“(fa) the manner in which proceedings may be initiated under section 57A;”.

Sd/-

Dr. SUBHASH C. JAIN,

Secretary to the Government of India.

By order and in the name of the Governor of Gujarat,

V. M. KOTHARE,

Secretary to Government.



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PART - VI

Acts of Parliament and Ordinances Promulgated by the President
LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT

Notification

Sachivalaya, Gandhinagar, 27th November, 2002.

No. RPB/33/2002/Act-1302-E:—The following Act of Parliament is republished for general information :-

GOVERNMENT OF INDIA

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS

(Legislative Department)

New Delhi, the 27th March, 2002/Chaitra 6, 1924 (SAKA)

The following Act of Parliament received the assent of the President on the 27th March, 2002 and is hereby published for general information:—

THE JUTE MANUFACTURES CESS (AMENDMENT) ACT, 2002

AN ACT

(Act No. 13 of 2002)

to amend the Jute Manufactures Cess Act, 1983.

(27th March, 2002)

Be it enacted by Parliament in the Fifty-third Year of the Republic of India as follows:—

1. (1) This Act may be called the Jute Manufactures Cess (Amendment) Act, 2002.

Short title and
commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, specify.

Substitution of
a new Schedule
for Schedule to
Act 28 of
1983.

2. For the Schedule to the Jute Manufactures Cess Act, 1983, the following Schedule shall be substituted, namely:—

“THE SCHEDULE

[See sections 2(a) and 3(1)]

Sl. No.	Articles of jute manufacture	The maximum rate at which duty of excise may be collected	Actual rate at which duty of excise is to be collected until a different rate is specified by the Central Government
1	2	3	4
1.	Carpet Backing	Two per cent. <i>ad valorem</i>	One per cent. <i>ad valorem</i>
2.	Hessian	Two per cent. <i>ad valorem</i>	One per cent. <i>ad valorem</i>
3.	Sacking	Two per cent. <i>ad valorem</i>	One per cent. <i>ad valorem</i>
4.	Yarn and Twine	Two per cent. <i>ad valorem</i>	One per cent. <i>ad valorem</i>
5.	D.W. Tarpaulin	Two per cent. <i>ad valorem</i>	One per cent. <i>ad valorem</i>
6.	Decorative Fabrics	Two per cent. <i>ad valorem</i>	One per cent. <i>ad valorem</i>
7.	Cotton Bagging	Two per cent. <i>ad valorem</i>	One per cent. <i>ad valorem</i>
8.	Soil Saver	Two per cent. <i>ad valorem</i>	One per cent. <i>ad valorem</i>
9.	Japanese Rice Bags	Two per cent. <i>ad valorem</i>	One per cent. <i>ad valorem</i>
10.	Any other article of jute manufacture	Two per cent. <i>ad valorem</i>	One per cent. <i>ad valorem</i> .”

Sd/-

DR. SUBHASH C. JAIN,
Secy. to the Govt. of India.

By order and in the name of the Governor of Gujarat,

V. M. KOTHARE,
Secretary to Government.

GOVERNMENT CENTRAL PRESS, GANDHINAGAR.



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PART - VI

Acts of Parliament and Ordinances Promulgated by the President LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT

Notification

Sachivalaya, Gandhinagar, 27th November, 2002.

No. RPB/34/2002/Act-1402-E:—The following Act of Parliament is republished for general information :-

GOVERNMENT OF INDIA

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS

(Legislative Department)

New Delhi, the 28th March, 2002/Chaitra 7, 1924 (SAKA)

The following Act of Parliament received the assent of the President on the 28th March, 2002 and is hereby published for general information:—

THE INTER-STATE WATER DISPUTES (AMENDMENT) ACT, 2002

AN ACT

(Act No. 14 of 2002)

(28th March, 2002)

further to amend the Inter-State Water Disputes Act, 1956.

Be it enacted by Parliament in the Fifty-third Year of the Republic of India as follows:—

1. (1) This Act may be called the Inter-State Water Disputes (Amendment) Act, 2002.
- (2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Short title and
commencement.

33 of 1956.

2. In section 1 of the Inter-State Water Disputes Act, 1956 (hereinafter referred to as the principal Act), in sub-section (1), for the words "Inter-State", the words "Inter-State River" shall be substituted.

Amendment
of section 1.

Amendment
of section 4.

3. In section 4 of the principal Act,—

(a) for sub-section (1), the following sub-section shall be substituted, namely:—

“(1) When any request under section 3 is received from any State Government in respect of any water dispute and the Central Government is of opinion that the water dispute cannot be settled by negotiations, the Central Government shall, within a period not exceeding one year from the date of receipt of such request, by notification in the Official Gazette, constitute a Water Disputes Tribunal for the adjudication of the water dispute:

Provided that any dispute settled by a Tribunal before the commencement of the Inter-State Water Disputes (Amendment) Act, 2002 shall not be re-opened.”;

(b) for sub-section (3), the following sub-section shall be substituted, namely:—

“(3) The Central Government may, in consultation with the Tribunal, appoint two or more persons as assessors to advise the Tribunal in the proceedings before it.”.

Amendment
of section 5.

4. In section 5 of the principal Act, for sub-sections (2) and (3), the following sub-sections shall be substituted, namely:—

“(2) The Tribunal shall investigate the matters referred to it and forward to the Central Government a report setting out the facts as found by it and giving its decision on the matters referred to it within a period of three years:

Provided that if the decision cannot be given for unavoidable reasons, within a period of three years, the Central Government may extend the period for a further period not exceeding two years.

(3) If, upon consideration of the decision of the Tribunal, the Central Government or any State Government is of opinion that anything therein contained requires explanation or that guidance is needed upon any point not originally referred to the Tribunal, the Central Government or the State Government, as the case may be, within three months from the date of the decision, again refer the matter to the Tribunal for further consideration, and on such reference, the Tribunal may forward to the Central Government a further report within one year from the date of such reference giving such explanation or guidance as it deems fit and in such a case, the decision of the Tribunal shall be deemed to be modified accordingly:

Provided that the period of one year within which the Tribunal may forward its report to the Central Government may be extended by the Central Government, for such further period as it considers necessary.”.

Amendment
of section 6.

5. Section 6 of the principal Act shall be renumbered as sub-section (1) thereof and after sub-section (1) as so renumbered, the following sub-section shall be inserted, namely:—

“(2) The decision of the Tribunal, after its publication in the Official Gazette by the Central Government under sub-section (1), shall have the same force as an order or decree of the Supreme Court.”.

Amendment of
section 9.

6. In section 9 of the principal Act, in sub-section (1), after clause (b), the following clause shall be inserted, namely:—

“(ba) requisitioning of any data, as may be required by it;”.

Insertion of
new section
9A.

7. After section 9 of the principal Act, the following section shall be inserted, namely:—

Maintenance
of data bank
and
information.

“9A. (1) The Central Government shall maintain a data bank and information system at the national level for each river basin which shall include data regarding water resources, land, agriculture, and matters relating thereto, as the Central

Government may prescribe from time to time. The State Government shall supply the data to the Central Government or to an agency appointed by the Central Government for the purpose, as and when required.

(2) The Central Government shall have powers to verify the data supplied by the State Government, and appoint any person or persons for the purpose and take such measures as it may consider necessary. The person or persons so appointed shall have the powers to summon such records and information from the concerned State Government as are considered necessary to discharge their functions under this section."

8. In section 13 of the principal Act, in sub-section (2), for clause (e), the following clause shall be substituted, namely:—

Amendment
of section 13.

"(e) the terms and conditions of service of officers and assessors of the Tribunal;"

Sd/-

DR. SUBHASH C. JAIN,
Secy. to the Govt. of India.

By order and in the name of the Governor of Gujarat,

V. M. KOTHARE,
Secretary to Government.

GOVERNMENT CENTRAL PRESS, GANDHINAGAR.



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PART - VI

Acts of Parliament and Ordinances Promulgated by the President

LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT

Notification

Sachivalaya, Gandhinagar, 27th November, 2002.

No. RPB/36/2002/Act-1602-E:—The following Act of Parliament is republished for general information :-

GOVERNMENT OF INDIA

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS

(Legislative Department)

New Delhi, the 28th March, 2002/Chaitra 7, 1924 (SAKA)

The following Act of Parliament received the assent of the President on the 28th March, 2002 and is hereby published for general information:—

THE INSTITUTES OF TECHNOLOGY (AMENDMENT) ACT, 2002

AN ACT

(Act No. 16 of 2002)

(28th March, 2002)

further to amend the Institutes of Technology Act, 1961.

BE it enacted by Parliament in the Fifty-third Year of the Republic of India as follows:—

1. (1) This Act may be called the Institutes of Technology (Amendment) Act, 2002.

Short title and
commencement.

(2) It shall be deemed to have come into force on the 21st day of September, 2001.

59 of 1961.

2. In section 2 of the Institutes of Technology Act, 1961 (hereinafter referred to as the principal Act), for the words "Kanpur and the Indian Institute of Technology, Madras", the words "Kanpur, the Indian Institute of Technology, Madras and the Indian Institute of Technology, Roorkee" shall be substituted.

Amendment
of section 2.

3. In section 3 of the principal Act,—

Amendment
of section 3.

(a) in clause (c),—

(i) the word "and" appearing at the end of sub-clause (ii) shall be omitted;

(ii) in sub-clause (iii), after the words "the Indian Institute of Technology, Madras," the word "and" shall be inserted; and

(iii) after sub-clause (iii), the following sub-clause shall be inserted, namely:—

"(iv) in relation to the University of Roorkee, Roorkee, the Indian Institute of Technology, Roorkee;"

(b) after clause (k), the following clause shall be inserted, namely:—

‘(l) “University of Roorkee” means the University of Roorkee established under the Roorkee University Act, 1947.’

U.P. Act IX of
1948.

Amendment
of section 4.

4. In section 4 of the principal Act, after sub-section (IB), the following sub-section shall be inserted, namely:—

“(IC) The University of Roorkee, Roorkee shall, on such incorporation, be called the Indian Institute of Technology, Roorkee.”

Insertion of
new section
5A.

5. After section 5 of the principal Act, the following section shall be inserted, namely:—

Effect of
incorporation
of Institute of
Technology,
Roorkee.

“5A. On and from the commencement of the Institutes of Technology (Amendment) Act, 2002,—

(a) any reference to the University of Roorkee in any law (other than this Act) or in any contract or other instrument shall be deemed as a reference to the Indian Institute of Technology, Roorkee;

(b) all property, movable and immovable, of or belonging to the University of Roorkee, shall vest in the Indian Institute of Technology, Roorkee;

(c) all rights and liabilities of the University of Roorkee shall be transferred to, and be the rights and liabilities of, the Indian Institute of Technology, Roorkee;

(d) every person employed by the University of Roorkee immediately before such commencement shall hold his office or service in the Indian Institute of Technology, Roorkee by the same tenure, at the same remuneration and upon the same terms and conditions and with the same rights and privileges as to pension, leave, gratuity, provident fund and other matters as he would have held the same if this Act had not been passed, and shall continue to do so unless and until his employment is terminated or until such tenure, remuneration and terms and conditions are duly altered by the Statutes:

Provided that if the alteration so made is not acceptable to such employee, his employment may be terminated by the Indian Institute of Technology, Roorkee in accordance with the terms of the contract with the employee or, if no provision is made therein in this behalf, on payment to him by the Indian Institute of Technology, Roorkee of compensation equivalent to three months’ remuneration in the case of permanent employees and one month’s remuneration in the case of other employees:

Provided further that any reference, by whatever form of words, to the Vice-Chancellor and Pro-Vice-Chancellor of the University of Roorkee in any law for the time being in force, or in any instrument or other document, shall be construed as a reference to the Director and the Deputy Director, respectively, of the Indian Institute of Technology, Roorkee; and

(e) on the commencement of the Institutes of Technology (Amendment) Act, 2002, the Vice-Chancellor of the University of Roorkee, appointed under the provisions of the Roorkee University Act, 1947 shall be deemed to have been appointed as Director under the Act, and shall hold office for a period of three months or till such time the Director is appointed, whichever is earlier.

U.P. Act IX of
1948.

Explanation.—The reference in this section to the commencement of this Act shall be construed in relation to the Indian Institute of Technology, Roorkee as the reference to the date on which the provisions of the Institutes of Technology (Amendment) Act, 2002 come into force.”

6. In section 38 of the principal Act,—

Amendment
of section 38.

(a) after clause (d), the following clauses shall be inserted, namely:—

“(e) the Syndicate of the University of Roorkee functioning as such immediately before the commencement of this Act shall continue to so function until a new Board is constituted for the Indian Institute of Technology, Roorkee under this Act, but on the constitution of a new Board under this Act, the members of the Syndicate holding office before such constitution shall cease to hold office;

(f) the Academic Council of the University of Roorkee functioning as such immediately before the commencement of this Act shall continue to so function until a new Senate is constituted for the Indian Institute of Technology, Roorkee under this Act, but on the constitution of a new Senate under this Act, the members of the Academic Council holding office before such constitution shall cease to hold office;

(g) until the first Statutes and the Ordinances in relation to the Indian Institute of Technology, Roorkee are made under this Act, the Statutes and Ordinances of the Indian Institute of Technology, Bombay as in force immediately before the commencement of the Institutes of Technology (Amendment) Act, 2002 shall apply to the Indian Institute of Technology, Roorkee with the necessary modifications and adaptations in so far as they are not inconsistent with the provisions of this Act;

(h) notwithstanding anything contained in the Institutes of Technology (Amendment) Act, 2002, any student who joined classes of the University of Roorkee on or after the commencement of 1994-95 academic session shall, for the purpose of clause (b) of sub-section (1) of section 6, be deemed to have pursued a course of study in the Indian Institute of Technology, Roorkee provided that such student has not already been awarded degree or diploma for the same course of study;

(i) if any difficulty arises in giving effect to the provisions of the Institutes of Technology (Amendment) Act, 2002, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as may appear to be necessary for removing the difficulty:

Provided that no order shall be made under this clause after the expiry of two years from the commencement of the Institutes of Technology (Amendment) Act, 2002:

Provided further that every order made under this clause shall be laid, as soon as may be after it is made, before each House of Parliament.”.

(b) *Explanation* shall be numbered as *Explanation 1* thereof and after *Explanation 1* as so numbered, the following *Explanation* shall be inserted, namely:—

“*Explanation 2*.—The reference in clauses (e) and (f) of this section to the commencement of this Act shall be construed in relation to the Indian Institute of Technology, Roorkee as the reference to the date on which the provisions of the Institutes of Technology (Amendment) Act, 2002 come into force.”.

7. (1) The Roorkee University Act, 1947 is hereby repealed.

Repeal and
savings.

(2) The provisions of the General Clauses Act, 1897 shall apply to the repeal of the said Act as if the said Act were a Central Act.

(3) The Institutes of Technology (Amendment) Second Ordinance, 2001 is hereby repealed.

U.P. Act IX of
1948.

10 of 1897.

Ord. 10 of
2001.

(4) Notwithstanding such repeal, anything done or any action taken under the repealed Ordinance shall be deemed to have been done or taken under the corresponding provisions of the principal Act, as amended by this Act.

Sd/-

DR. SUBHASH C. JAIN,
Secy. to the Govt. of India.

By order and in the name of the Governor of Gujarat,

V. M. KOTHARE,
Secretary to Government.

GOVERNMENT CENTRAL PRESS, GANDHINAGAR.



सत्यमेव जयते

The Gujarat Government Gazette EXTRAORDINARY

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Separate paging is given to this Part in order that it may be filed as a Separate Compilation.

PART - VI

Acts of Parliament and Ordinances Promulgated by the President LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT Notification

Sachivalaya, Gandhinagar, 27th November, 2002.

No. RPB/37/2002/Act-1702-E:—The following Act of Parliament is republished for general information :-

GOVERNMENT OF INDIA MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (Legislative Department)

New Delhi, the 28th March, 2002/Chaitra 7, 1924 (SAKA)

The following Act of Parliament received the assent of the President on the 28th March, 2002 and is hereby published for general information:—

THE PASSPORTS (AMENDMENT) ACT, 2002 AN ACT

(Act No. 17 of 2002)

(28th March, 2002)

further to amend the Passports Act, 1967.

BE it enacted by Parliament in the Fifty-third Year of the Republic of India as follows:—

1. (1) This Act may be called the Passports (Amendment) Act, 2002.

Short title
and com-
mencement.

(2) It shall be deemed to have come into force on the 23rd day of October, 2001.

15 of 1967.

2. After section 10 of the Passports Act, 1967 (hereinafter referred to as the principal Act), the following sections shall be inserted, namely:—

Insertion of
new sections
10A and 10B.

'10A. (1) Without prejudice to the generality of the provisions contained in section 10, if the Central Government or any designated officer is satisfied that the passport or travel document is likely to be impounded or caused to be impounded or revoked under clause (c) of sub-section (3) of section 10 and it is necessary in the public interest so to do, it or he may,—

Suspension of
passports or
travel
documents in
certain cases.

(a) by order, suspend, with immediate effect, any passport or travel document;

(b) pass such other appropriate order which may have the effect of rendering any passport or travel document invalid,

for a period not exceeding four weeks:

Provided that the Central Government or the designated officer may, if it or he considers appropriate, extend, by order and for reasons to be recorded in writing, the said period of four weeks till the proceedings relating to variation, impounding or revocation of passport or travel document under section 10 are concluded:

Provided further that every holder of the passport or travel document, in respect of whom an order under clause (a) or clause (b) of this sub-section had been passed, shall be given an opportunity of being heard within a period of not later than eight weeks reckoned from the date of passing of such order and thereupon the Central Government may, if necessary, by order in writing, modify or revoke the order passed under this sub-section.

(2) The designated officer shall immediately communicate the orders passed under sub-section (1), to the concerned authority at an airport or any other point of embarkation or immigration, and to the passport authority.

(3) Every authority referred to in sub-section (2) shall, immediately on receipt of the order passed under sub-section (1), give effect to such order.

Validation of intimations.

10B. Every intimation given by the Central Government or the designated officer, before the commencement of the Passports (Amendment) Act, 2002, to any immigration authority at an airport or any other point of embarkation or immigration, restricting or in any manner prohibiting the departure from India of any holder of the passport or travel document under sub-section (3) of section 10, shall be deemed to be an order under sub-section (1) of section 10A and such order shall continue to be in force for a period of three months from the date of commencement of the Passports (Amendment) Act, 2002, or the date of giving such intimation, whichever is later.

Explanation.—For the purposes of sections 10A and 10B, the expression “designated officer” means such officer or authority designated, by order in writing, as such by the Central Government.

Repeal and saving.

3. (1) The Passports (Amendment) Second Ordinance, 2001, is hereby repealed.

Ord. 11 of 2001.

(2) Notwithstanding such repeal, anything done or any action taken under the principal Act, as amended by the said Ordinance, shall be deemed to have been done or taken under the principal Act, as amended by this Act.

(Sd/-

DR. SUBHASH C. JAIN,
Secy. to the Govt. of India.

By order and in the name of the Governor of Gujarat,

V. M. KOTHARE,
Secretary to Government.

GOVERNMENT CENTRAL PRESS, GANDHINAGAR.



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PART - VI

Acts of Parliament and Ordinances Promulgated by the President LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT

Sachivalaya, Gandhinagar, 27th November, 2002.

No. : RPB/40/2002/ACT-4202/E : The following Act of Parliament is republished for general information :-

GOVERNMENT OF INDIA

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS,

(Legislative Department),

New Delhi, the 13th May, 2002/Visakha 23, 1924 (Saka)

The following Act of Parliament received the assent of the President on the 11th May, 2002 and is hereby published for general information :-

THE FINANCE ACT, 2002

AN ACT

(Act No. 20 of 2002)

(11th May, 2002)

to give effect to the financial proposals of the Central Government for the financial year 2002-2003.

Be it enacted by Parliament in the Fifty-third Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Finance Act, 2002.

Short title and
commence-
ment.

(2) Save as otherwise provided in this Act, sections 2 to 116 shall be deemed to have come into force on the 1st day of April, 2002.

CHAPTER II

RATES OF INCOME-TAX

43 of 1961.

2. (1) Subject to the provisions of sub-sections (2) and (3), for the assessment year commencing on the 1st day of April, 2002, income-tax shall be charged at the rates specified in Part I of the First Schedule and such tax as reduced by the rebate of income-tax calculated under Chapter VIII-A of the Income-tax Act, 1961 (hereinafter referred to as the Income-tax Act) shall be increased by a surcharge for purposes of the Union calculated in each case in the manner provided therein.

Income-tax.

(2) In the cases to which Paragraph A of Part I of the First Schedule applies, where the assessee has, in the previous year, any net agricultural income exceeding five thousand rupees, in addition to total income, and the total income exceeds fifty thousand rupees, then,—

(a) the net agricultural income shall be taken into account, in the manner provided in clause (b) [that is to say, as if the net agricultural income were comprised in the total income after the first fifty thousand rupees of the total income but without being liable to tax], only for the purpose of charging income-tax in respect of the total income; and

(b) the income-tax chargeable shall be calculated as follows:—

(i) the total income and the net agricultural income shall be aggregated and the amount of income-tax shall be determined in respect of the aggregate income at the rates specified in the said Paragraph A, as if such aggregate income were the total income;

(ii) the net agricultural income shall be increased by a sum of fifty thousand rupees, and the amount of income-tax shall be determined in respect of the net agricultural income as so increased at the rates specified in the said Paragraph A, as if the net agricultural income as so increased were the total income;

(iii) the amount of income-tax determined in accordance with sub-clause (i) shall be reduced by the amount of income-tax determined in accordance with sub-clause (ii) and the sum so arrived at shall be the income-tax in respect of the total income:

Provided that the amount of income-tax so arrived at, as reduced by the amount of rebate of income-tax calculated under Chapter VIII-A, shall be increased by a surcharge for purposes of the Union calculated in each case in the manner provided in that Paragraph and the sum so arrived at shall be the income-tax in respect of the total income.

(3) In cases to which the provisions of Chapter XII or Chapter XII-A or sub-section (1A) of section 161 or section 164 or section 164A or section 167B of the Income-tax Act apply, the tax chargeable shall be determined as provided in that Chapter or that section, and with reference to the rates imposed by sub-section (1) or the rates as specified in that Chapter or section, as the case may be:

Provided that the amount of income-tax computed in accordance with the provisions of sections 112 and 113 shall be increased by a surcharge for purposes of the Union or surcharge as provided in Paragraph A, B, C, D or E, as the case may be, of Part I of the First Schedule:

Provided further that in respect of any income chargeable to tax under sections 115A, 115AB, 115AC, 115ACA, 115AD, 115B, 115BB, 115BBA, 115E and 115JB of the Income-tax Act, the amount of income-tax computed under this sub-section shall be increased by a surcharge for purposes of the Union, calculated at the rate of two per cent. of such income-tax:

Provided also that no surcharge shall be payable by a foreign company.

(4) In cases in which tax has to be charged and paid under section 115U of the Income-tax Act, the tax shall be charged and paid at the rate as specified in the said section and shall be increased by a surcharge for purposes of the Union, calculated at the rate of five per cent. of such tax.

(5) In cases in which tax has to be deducted under sections 193, 194, 194A, 194B, 194BB, 194D and 195 of the Income-tax Act, at the rates in force, the deductions shall be made at the rates specified in Part II of the First Schedule and shall be increased, by a surcharge for purposes of the Union, calculated in each case, in the manner provided therein.

(6) In cases in which tax has to be deducted under sections 194C, 194E, 194EE, 194F, 194G, 194H, 194I, 194J, 194K, 194L, 196A, 196B, 196C and 196D of the Income-tax Act, the deductions shall be made at the rates specified in those sections and shall be increased by a surcharge for purposes of the Union, calculated at the rate of five per cent. of such tax.

(7) In cases in which tax has to be collected under the proviso to section 194B or under section 206C of the Income-tax Act, the collection shall be made at the rates specified in that section or at the rates specified in Part II of the First Schedule, as the case may be, and shall be increased, by a surcharge for purposes of the Union, calculated in each case, in the manner provided therein.

(8) Subject to the provisions of sub-section (9), in cases in which income-tax has to be charged under sub-section (4) of section 172 or sub-section (2) of section 174 or section 174A or section 175 or sub-section (2) of section 176 of the Income-tax Act or deducted from, or paid on, income chargeable under the head "Salaries" under section 192 of the said Act or in which the "advance tax" payable under Chapter XVII-C of the said Act has to be computed, at the rate or rates in force, such income-tax or, as the case may be, "advance tax" shall be so charged, deducted or computed at the rate or rates specified in Part III of the First Schedule and such tax as reduced by the rebate of income-tax calculated under Chapter VIII-A of the said Act shall be increased for purposes of the Union, calculated in each case in the manner provided therein:

Provided that in cases to which the provisions of Chapter XII or Chapter XII-A or section 115JB or sub-section (1A) of section 161 or section 164 or section 164A or section 167B of the Income-tax Act apply, "advance tax" shall be computed with reference to the rates imposed by this sub-section or the rates as specified in that Chapter or section, as the case may be:

Provided further that the amount of income-tax computed in accordance with the provisions of section 112 of the Income-tax Act shall be increased by a surcharge for purposes of the Union as provided in Paragraph A, B, C, D or E, as the case may be, of Part III of the First Schedule:

Provided also that in respect of any income chargeable to tax under sections 115A, 115AB, 115AC, 115ACA, 115AD, 115B, 115BB, 115BBA, 115BBB, 115E and 115JB of the Income-tax Act, "advance tax" computed under the first proviso shall be increased by a surcharge, for purposes of the Union, calculated at the rate of five per cent. of such tax.

(9) In cases to which Paragraph A of Part III of the First Schedule applies, where the assessee has, in the previous year or, if by virtue of any provision of the Income-tax Act, income-tax is to be charged in respect of the income of a period other than the previous year, in such other period, any net agricultural income exceeding five thousand rupees, in addition to total income and the total income exceeds fifty thousand rupees, then, in charging income-tax under sub-section (2) of section 174 or section 174A or section 175 or sub-section (2) of section 176 of the said Act or in computing the "advance tax" payable under Chapter XVII-C of the said Act, at the rate or rates in force,—

(a) the net agricultural income shall be taken into account, in the manner provided in clause (b) [that is to say, as if the net agricultural income were comprised in the total income after the first fifty thousand rupees of the total income but without being liable to tax], only for the purpose of charging or computing such income-tax or, as the case may be, "advance tax" in respect of the total income; and

(b) such income-tax or, as the case may be, "advance tax" shall be so charged or computed as follows:—

(i) the total income and the net agricultural income shall be aggregated and the amount of income-tax or "advance tax" shall be determined in respect of the aggregate income at the rates specified in the said Paragraph A, as if such aggregate income were the total income;

(ii) the net agricultural income shall be increased by a sum of fifty thousand rupees, and the amount of income-tax or "advance tax" shall be determined in respect of the net agricultural income as so increased at the rates specified in the said Paragraph A, as if the net agricultural income were the total income;

(iii) the amount of income-tax or "advance tax" determined in accordance with sub-clause (i) shall be reduced by the amount of income-tax or, as the case may be, "advance tax" determined in accordance with sub-clause (ii) and the sum so arrived at shall be the income-tax or, as the case may be, "advance tax" in respect of the total income:

Provided that the amount of income-tax or "advance tax" so arrived at, as reduced by the rebate of income-tax calculated under Chapter VIII-A of the said Act, shall be increased by a surcharge for purposes of the Union calculated in each case, in the manner provided therein.

(10) For the purposes of this section and the First Schedule,—

(a) "domestic company" means an Indian company or any other company which, in respect of its income liable to income-tax under the Income-tax Act for the assessment year commencing on the 1st day of April, 2002, has made the prescribed arrangements for the declaration and payment within India of the dividends (including dividends on preference shares) payable out of such income;

(b) "insurance commission" means any remuneration or reward, whether by way of commission or otherwise, for soliciting or procuring insurance business (including business relating to the continuance, renewal or revival of policies of insurance);

(c) "net agricultural income", in relation to a person, means the total amount of agricultural income, from whatever source derived, of that person computed in accordance with the rules contained in Part IV of the First Schedule;

(d) all other words and expressions used in this section and the First Schedule but not defined in this sub-section and defined in the Income-tax Act shall have the meanings respectively assigned to them in that Act.

CHAPTER III

DIRECT TAXES

Income-tax

Amendment
of section 2.

3. In section 2 of the Income-tax Act,—

(a) in clause (24), after sub-clause (xi), the following sub-clause shall be inserted with effect from the 1st day of April, 2003, namely:—

"(xii) any sum referred to in clause (vii) of section 28;";

(b) in clause (31), after sub-clause (vii), the following *Explanation* shall be inserted, namely:—

"*Explanation.*—For the purposes of this clause, an association of persons or a body of individuals or a local authority or an artificial juridical person shall be deemed to be a person, whether or not such person or body or authority or juridical person was formed or established or incorporated with the object of deriving income, profits or gains;";

(c) in clause (37A), in sub-clause (i), for the words, figures and letters "or section 115BB or section 115E", wherever they occur, the words, figures and letters "or section 115BB or section 115BBB or section 115E" shall be substituted with effect from the 1st day of April, 2003.

Amendment
of section 10.

4. In section 10 of the Income-tax Act,—

(a) clause (3) shall be omitted with effect from the 1st day of April, 2003;

(b) in clause (4), in sub-clause (i), the following proviso shall be inserted with effect from the 1st day of April, 2003, namely:—

"Provided that the Central Government shall not specify, for the purposes of this sub-clause, such securities or bonds on or after the 1st day of June, 2002;";

(c) in clause (4B), for the words "savings certificates issued", the words, figures and letters "savings certificates issued before the 1st day of June, 2002" shall be substituted with effect from the 1st day of April, 2003;

(d) clause (5B) shall be omitted with effect from the 1st day of April, 2003;

(e) in clause (6), sub-clause (i) shall be omitted with effect from the 1st day of April, 2003;

(f) in clause (6A), after the words, figures and letters "Government or the Indian concern after the 31st day of March, 1976", the words, figures and letters "but before the 1st day of June, 2002" shall be inserted with effect from the 1st day of April, 2003;

(g) in clause (6B), with effect from the 1st day of April, 2003,—

(i) for the words "agreement entered into by the Central Government", the words, figures and letters "agreement entered into before the 1st day of June, 2002 by the Central Government" shall be substituted;

(ii) for the words "related agreement approved", the words "related agreement approved before that date" shall be substituted;

(h) in clause (10C), after sub-clause (viib), the following sub-clause shall be inserted, namely:—

"(viic) an institution, having importance throughout India or in any State or States, as the Central Government may, by notification in the Official Gazette, specify in this behalf; or";

(i) after clause (10C), the following clause shall be inserted with effect from the 1st day of April, 2003, namely:—

"(10CC) in the case of an employee, being an individual deriving income in the nature of a perquisite, not provided for by way of monetary payment, within the meaning of clause (2) of section 17, the tax on such income actually paid by his employer, at the option of the employer, on behalf of such employee, notwithstanding anything contained in section 200 of the Companies Act, 1956;"

(j) clause (14A) shall be omitted with effect from the 1st day of April, 2003;

(k) in clause (15), with effect from the 1st day of April, 2003,—

(i) in sub-clause (iib), the following proviso shall be inserted, namely:—

"Provided that the Central Government shall not specify, for the purposes of this sub-clause, such Capital Investment Bonds on or after the 1st day of June, 2002;"

(ii) in sub-clause (iic), after the third proviso and before the *Explanation*, the following proviso shall be inserted, namely:—

"Provided also that the Central Government shall not specify, for the purposes of this sub-clause, such bonds on or after the 1st day of June, 2002;"

(l) in clause (20), the following *Explanation* shall be inserted with effect from the 1st day of April, 2003, namely:—

'Explanation.—For the purposes of this clause, the expression "local authority" means—

(i) Panchayat as referred to in clause (d) of article 243 of the Constitution; or

(ii) Municipality as referred to in clause (e) of article 243P of the Constitution; or

(iii) Municipal Committee and District Board,

legally entitled to, or entrusted by the Government with, the control or management of a Municipal or local fund; or

(iv) Cantonment Board as defined in section 3 of the Cantonments Act, 1924;";

2 of 1924.

(m) clause (20A) shall be omitted with effect from the 1st day of April, 2003;

(n) in clause (21), after the third proviso, the following proviso shall be inserted with effect from the 1st day of April, 2003, namely:—

"Provided also that where the scientific research association is approved by the Central Government and subsequently that Government is satisfied that—

(i) the scientific research association has not applied its income in accordance with the provisions contained in clause (a) of the first proviso; or

(ii) the scientific research association has not invested or deposited its funds in accordance with the provisions contained in clause (b) of the first proviso; or

(iii) the activities of the scientific research association are not genuine; or

(iv) the activities of the scientific research association are not being carried out in accordance with all or any of the conditions subject to which such association was approved,

it may, at any time after giving a reasonable opportunity of showing cause against the proposed withdrawal to the concerned association, by order, withdraw the approval and forward a copy of the order withdrawing the approval to such association and to the Assessing Officer;";

(o) in clause (22B), after the second proviso, the following proviso shall be inserted with effect from the 1st day of April, 2003, namely:—

"Provided also that where the news agency has been specified, by notification, by the Central Government and subsequently that Government is satisfied that such news agency has not applied or accumulated or distributed its income in accordance with the provisions contained in the first proviso, it may, at any time after giving a reasonable opportunity of showing cause, rescind the notification and forward a copy of the order rescinding the notification to such agency and to the Assessing Officer;";

(p) clause (23) shall be omitted with effect from the 1st day of April, 2003;

(q) in clause (23A), after the proviso, the following proviso shall be inserted with effect from the 1st day of April, 2003, namely:—

"Provided further that where the association or institution has been approved by the Central Government and subsequently that Government is satisfied that—

(i) such association or institution has not applied or accumulated its income in accordance with the provisions contained in the first proviso; or

(ii) the activities of the association or institution are not being carried out in accordance with all or any of the conditions subject to which such association or institution was approved,

it may, at any time after giving a reasonable opportunity of showing cause against the proposed withdrawal to the concerned association or institution, by

order, withdraw the approval and forward a copy of the order withdrawing the approval to such association or institution and to the Assessing Officer;"

(r) in clause (23B), after the second proviso and before the *Explanation*, the following proviso shall be inserted with effect from the 1st day of April, 2003, namely:—

"Provided also that where the institution has been approved by the Khadi and Village Industries Commission and subsequently that Commission is satisfied that—

(i) the institution has not applied or accumulated its income in accordance with the provisions contained in the first proviso; or

(ii) the activities of the institution are not being carried out in accordance with all or any of the conditions subject to which such institution was approved,

it may, at any time after giving a reasonable opportunity of showing cause against the proposed withdrawal to the concerned institution, by order, withdraw the approval and forward a copy of the order withdrawing the approval to such institution and to the Assessing Officer;"

(s) in clause (23C),—

(i) in the third proviso, for clause (a), the following clause shall be substituted with effect from the 1st day of April, 2003, namely:—

"(a) applies its income, or accumulates it for application, wholly and exclusively to the objects for which it is established and in a case where more than fifteen per cent. of its income is accumulated on or after the 1st day of April, 2002, the period of the accumulation of the amount exceeding fifteen per cent. of its income shall in no case exceed five years; and"

(ii) in the ninth proviso, with effect from the 3rd day of February, 2001,—

(a) after the words, brackets, letters and figures "in terms of clause (d) of sub-section (2) of section 80G", the words, brackets, figures and letter "in respect of which accounts of income and expenditure have not been rendered to the authority prescribed under clause (v) of sub-section (5C) of that section, in the manner specified in that clause, or" shall be inserted and shall be deemed to have been inserted;

(b) for the words, figures and letters "or before the 31st day of March, 2002", the words, figures and letters "or before the 31st day of March, 2003" shall be substituted and shall be deemed to have been substituted;

(iii) the tenth proviso shall be omitted;

(iv) after the tenth proviso, the following provisos shall be inserted with effect from the 1st day of April, 2003, namely:—

"Provided also that where the fund or trust or institution or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) does not apply its income during the year of receipt and accumulates it, any payment or credit out of such accumulation to any trust or institution registered under section 12AA or to any fund or trust or institution or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) shall not be treated as application of income to the objects for which such fund or trust or institution or university or educational institution or hospital or other medical institution, as the case may be, is established:

Provided also that where the fund or institution referred to in sub-clause (iv) or trust or institution referred to in sub-clause (v) is notified by the Central Government or any university or other educational institution referred to in sub-clause (vi) or any hospital or other medical institution referred to in sub-clause (via), is approved by the prescribed authority and subsequently that Government or the prescribed authority is satisfied that—

(i) such fund or institution or trust or any university or other educational institution or any hospital or other medical institution has not—

(A) applied its income in accordance with the provisions contained in clause (a) of the third proviso; or

(B) invested or deposited its funds in accordance with the provisions contained in clause (b) of the third proviso; or

(ii) the activities of such fund or institution or trust or any university or other educational institution or any hospital or other medical institution—

(A) are not genuine; or

(B) are not being carried out in accordance with all or any of the conditions subject to which it was notified or approved,

it may, at any time after giving a reasonable opportunity of showing cause against the proposed action to the concerned fund or institution or trust or any university or other educational institution or any hospital or other medical institution, rescind the notification or, by order, withdraw the approval, as the case may be, and forward a copy of the order rescinding the notification or withdrawing the approval to such fund or institution or trust or any university or other educational institution or any hospital or other medical institution and to the Assessing Officer;”;

(i) in clause (23D), in the opening portion, the words, figures and letter “subject to the provisions of Chapter XII-E,” shall be omitted with effect from the 1st day of April, 2003;

(u) clause (23E) shall be omitted with effect from the 1st day of April, 2003;

(v) after clause (23EA), the following clause shall be inserted, namely:—

“(23EB) any income of the Credit Guarantee Fund Trust for Small Scale Industries, being a trust created by the Government of India and the Small Industries Development Bank of India established under sub-section (1) of section 3 of the Small Industries Development Bank of India Act, 1989, for five previous years relevant to the assessment years beginning on the 1st day of April, 2002 and ending on the 31st day of March, 2007;”;

(w) in clause (23FA), the words, figures and letter “other than dividends referred to in section 115-O,” shall be omitted with effect from the 1st day of April, 2003;

(x) in clause (23G), the words, figures and letter “other than dividends referred to in section 115-O,” shall be omitted with effect from the 1st day of April, 2003;

(v) clauses (29) and (33) shall be omitted with effect from the 1st day of April, 2003.

5. In section 10A of the Income-tax Act, with effect from the 1st day of April, 2003,— Amendment of section 10A.

(a) in sub-section (1), after the third proviso, the following proviso shall be inserted, namely:—

"Provided also that for the assessment year beginning on the 1st day of April, 2003, the deduction under this sub-section shall be ninety per cent. of the profits and gains derived by an undertaking from the export of such articles or things or computer software:";

(b) after sub-section (1), the following sub-section shall be inserted, namely:—

"(1A) Notwithstanding anything contained in sub-section (1), the deduction, in computing the total income of an undertaking, which begins to manufacture or produce articles or things or computer software during the previous year relevant to any assessment year commencing on or after the 1st day of April, 2003, in any special economic zone, shall be hundred per cent. of profits and gains derived from the export of such articles or things or computer software for a period of five consecutive assessment years beginning with the assessment year relevant to the previous year in which the undertaking begins to manufacture or produce such articles or things or computer software, as the case may be, and thereafter, fifty per cent. of such profits and gains for further two assessment years.";

(c) after sub-section (9) and before *Explanation 1*, the following shall be inserted, namely:—

"(9A) Notwithstanding anything contained in sub-section (9), where as a result of reorganisation of business, a firm or a sole proprietary concern is succeeded by a company and the ownership or beneficial interest in the undertaking of the firm or the sole proprietary concern is transferred to the company, the deduction under sub-section (1) in respect of such undertaking shall be allowed to the company, as the same would have been allowed to such firm or sole proprietary concern, as the case may be, if the reorganisation had not taken place:

Provided that,—

(a) in the case of a firm, the aggregate of the shareholding in the company of the partners of the firm is not less than fifty-one per cent. of the total voting power in the company and their shareholding continues to be as such for the period for which the company is eligible for deduction under this section;

(b) in the case of a sole proprietary concern, the shareholding of the sole proprietor in the company is not less than fifty-one per cent. of the total voting power in the company and his shareholding continues to remain as such for the period for which the company is eligible for deduction under this section."

6. In section 10B of the Income-tax Act, with effect from the 1st day of April, 2003,— Amendment of section 10B.

(a) in sub-section (1), after the second proviso, the following proviso shall be inserted, namely:—

"Provided also that for the assessment year beginning on the 1st day of April, 2003, the deduction under this sub-section shall be ninety per cent. of the profits and gains derived by an undertaking from the export of such articles or things or computer software:";

(b) after sub-section (9) and before *Explanation 1*, the following shall be inserted, namely:—

"(9A) Notwithstanding anything contained in sub-section (9), where as a result of reorganisation of business, a firm or a sole proprietary concern is succeeded by a company and the ownership or beneficial interest in the undertaking of the firm or the sole proprietary concern is transferred to the company, the deduction under sub-section (1) in respect of such undertaking shall be allowed to the company, as the same would have been allowed to such firm or sole proprietary concern, as the case may be, if the reorganisation had not taken place:

Provided that,—

(a) in the case of a firm, the aggregate of the shareholding in the company of the partners of the firm is not less than fifty-one per cent. of the total voting power in the company and their shareholding continues to be as such for the period for which the company is eligible for deduction under this section;

(b) in the case of a sole proprietary concern, the shareholding of the sole proprietor in the company is not less than fifty-one per cent. of the total voting power in the company and his shareholding continues to remain as such for the period for which the company is eligible for deduction under this section."

Amendment of
section 11.

7. In section 11 of the Income-tax Act, with effect from the 1st day of April, 2003,—

(a) in sub-section (1),—

(i) in clause (a), for the words "twenty-five per cent.", the words "fifteen per cent." shall be substituted;

(ii) in clause (b), for the words "twenty-five per cent.", the words "fifteen per cent." shall be substituted;

(iii) in the *Explanation*,—

(A) in clause (1), for the words "twenty-five per cent.", the words "fifteen per cent." shall be substituted;

(B) in clause (2), for the words "seventy-five per cent.", the words "eighty-five per cent." shall be substituted;

(b) in sub-section (2),—

(i) for the words "seventy-five per cent.", the words "eighty-five per cent." shall be substituted;

(ii) after the second proviso, the following *Explanation* shall be inserted, namely:—

"*Explanation*.—Any amount credited or paid, out of income referred to in clause (a) or clause (b) of sub-section (1), read with the *Explanation* to that sub-section, which is not applied, but is accumulated or set apart, to any trust or institution registered under section 12AA or to any fund or institution or trust or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) of section 10, shall not be treated as application of income for charitable or religious purposes, either during the period of accumulation or thereafter.";

(c) in sub-section (3),—

(i) after clause (c), the following clause shall be inserted, namely:—

“(d) is credited or paid to any trust or institution registered under section 12AA or to any fund or institution or trust or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) of section 10.”;

(ii) for the words “set apart or ceases to remain so invested or deposited or”, the words “set apart or ceases to remain so invested or deposited or credited or paid or” shall be substituted;

(d) in sub-section (3A), the following proviso shall be inserted, namely:—

“Provided that the Assessing Officer shall not allow application of such income by way of payment or credit made for the purposes referred to in clause (d) of sub-section (3) of section 11.”.

8. In section 12 of the Income-tax Act, in sub-section (3), with effect from the 3rd day of February, 2001,—

Amendment of section 12.

(a) after the words, brackets, letters and figures “in terms of clause (d) of sub-section (2) of section 80G”, the words, brackets, figures and letter “in respect of which accounts of income and expenditure have not been rendered to the authority prescribed under clause (v) of sub-section (5C) of that section, in the manner specified in that clause, or” shall be inserted and shall be deemed to have been inserted;

(b) for the words, figures and letters “or before the 31st day of March, 2002”, the words, figures and letters “or before the 31st day of March, 2003” shall be substituted and shall be deemed to have been substituted.

9. In section 12A of the Income-tax Act, clause (c) shall be omitted.

Amendment of section 12A.

10. In section 14A of the Income-tax Act, the following proviso shall be inserted and shall be deemed to have been inserted with effect from the 11th day of May, 2001, namely:—

Amendment of section 14A.

“Provided that nothing contained in this section shall empower the Assessing Officer either to reassess under section 147 or pass an order enhancing the assessment or reducing a refund already made or otherwise increasing the liability of the assessee under section 154, for any assessment year beginning on or before the 1st day of April, 2001.”.

11. In section 17 of the Income-tax Act, in clause (2), after the proviso and before the *Explanation*, the following proviso shall be inserted, namely:—

Amendment of section 17.

‘Provided further that for the assessment year beginning on the 1st day of April, 2002, nothing contained in this clause shall apply to any employee whose income under the head “Salaries” (whether due from, or paid or allowed by, one or more employers) exclusive of the value of all perquisites not provided for by way of monetary payment, does not exceed one lakh rupees.’.

12. In section 24 of the Income-tax Act, in clause (b), with effect from the 1st day of April, 2003,—

Amendment of section 24.

(a) in the second proviso, for the words, figures and letters “before the 1st day of April, 2003”, the words “within three years from the end of the financial year in which capital was borrowed” shall be substituted;

(b) after the second proviso and the *Explanation*, the following shall be inserted, namely:—

‘Provided also that no deduction shall be made under the second proviso unless the assessee furnishes a certificate, from the person to whom any interest is payable on the capital borrowed, specifying the amount of interest payable by

the assessee for the purpose of such acquisition or construction of the property, or, conversion of the whole or any part of the capital borrowed which remains to be repaid as a new loan.

Explanation.—For the purposes of this proviso, the expression “new loan” means the whole or any part of a loan taken by the assessee subsequent to the capital borrowed, for the purpose of repayment of such capital.

Amendment
of section 28.

13. In section 28 of the Income-tax Act, after clause (v), the following shall be inserted with effect from the 1st day of April, 2003, namely:—

“(va) any sum, whether received or receivable, in cash or kind, under an agreement for—

(a) not carrying out any activity in relation to any business; or

(b) not sharing any know-how, patent, copyright, trade-mark, licence, franchise or any other business or commercial right of similar nature or information or technique likely to assist in the manufacture or processing of goods or provision for services:

Provided that sub-clause (a) shall not apply to—

(i) any sum, whether received or receivable, in cash or kind, on account of transfer of the right to manufacture, produce or process any article or thing or right to carry on any business, which is chargeable under the head “Capital gains”;

(ii) any sum received as compensation, from the multilateral fund of the Montreal Protocol on Substances that Deplete the Ozone Layer under the United Nations Environment Programme, in accordance with the terms of agreement entered into with the Government of India.

Explanation.—For the purposes of this clause,—

(i) “agreement” includes any arrangement or understanding or action in concert,—

(A) whether or not such arrangement, understanding or action is formal or in writing; or

(B) whether or not such arrangement, understanding or action is intended to be enforceable by legal proceedings;

(ii) “service” means service of any description which is made available to potential users and includes the provision of services in connection with business of any industrial or commercial nature such as accounting, banking, communication, conveying of news or information, advertising, entertainment, amusement, education, financing, insurance, chit funds, real estate, construction, transport, storage, processing, supply of electrical or other energy, boarding and lodging.

Amendment
of section 32.

14. In section 32 of the Income-tax Act, in sub-section (1), with effect from the 1st day of April, 2003,—

(a) in clause (ii),—

(i) in the second proviso, for the words, brackets and figures “or clause (ii)”, at both the places where they occur, the words, brackets, figures and letter “or clause (ii) or clause (iia)” shall be substituted;

(ii) in *Explanation 2* below the fifth proviso, for the words “For the purposes of this clause”, the words “For the purposes of this sub-section” shall be substituted;

(b) after clause (ii), the following shall be inserted, namely:—

'(iia) in the case of any new machinery or plant (other than ships and aircraft), which has been acquired and installed after the 31st day of March, 2002, by an assessee engaged in the business of manufacture or production of any article or thing, a further sum equal to fifteen per cent. of the actual cost of such machinery or plant shall be allowed as deduction under clause (ii):

Provided that such further deduction of fifteen per cent. shall be allowed to—

(A) a new industrial undertaking during any previous year in which such undertaking begins to manufacture or produce any article or thing on or after the 1st day of April, 2002; or

(B) any industrial undertaking existing before the 1st day of April, 2002, during any previous year in which it achieves the substantial expansion by way of increase in installed capacity by not less than twenty-five per cent.:

Provided further that no deduction shall be allowed in respect of—

(a) any machinery or plant which, before its installation by the assessee, was used either within or outside India by any other person; or

(b) any machinery or plant installed in any office premises or any residential accommodation, including accommodation in the nature of a guest house; or

(c) any office appliances or road transport vehicles; or

(d) any machinery or plant, the whole of the actual cost of which is allowed as a deduction (whether by way of depreciation or otherwise) in computing the income chargeable under the head "Profits and gains of business or profession" of any one previous year:

Provided also that no deduction shall be allowed under clause (A) or, as the case may be, clause (B), of the first proviso unless the assessee furnishes the details of machinery or plant and increase in the installed capacity of production in such form, as may be prescribed, along with the return of income, and the report of an accountant, as defined in the *Explanation* below sub-section (2) of section 288 certifying that the deduction has been correctly claimed in accordance with the provisions of this clause.

Explanation. — For the purposes of this clause,—

(1) "new industrial undertaking" means an undertaking which is not formed,—

(a) by the splitting up, or the reconstruction, of a business already in existence; or

(b) by the transfer to a new business of machinery or plant previously used for any purpose;

(2) "installed capacity" means the capacity of production as existing on the 31st day of March, 2002.'

15. In section 33AC of the Income-tax Act, in sub-section (1), for the first proviso, the following proviso shall be substituted with effect from the 1st day of April, 2003, namely:—

"Provided that where the aggregate of the amounts carried to such reserve account from time to time exceeds twice the aggregate of the amounts of the paid-up share capital, the general reserves and amount credited to the share premium account of the assessee, no allowance under this sub-section shall be made in respect of such excess."

Amendment
of section
33AC.

Amendment
of section
35AC.

16. In section 35AC of the Income-tax Act, after sub-section (5) and before the *Explanation*, the following sub-section shall be inserted with effect from the 1st day of April, 2003, namely:—

“(6) Notwithstanding anything contained in any other provision of this Act, where—

(i) the approval of the National Committee, granted to an association or institution, is withdrawn under sub-section (4) or the notification in respect of eligible project or scheme is withdrawn in the case of a public sector company or local authority or an association or institution under sub-section (5); or

(ii) a company has claimed deduction under the proviso to sub-section (1) in respect of any expenditure incurred directly on the eligible project or scheme and the approval for such project or scheme is withdrawn by the National Committee under sub-section (5),

the total amount of the payment received by the public sector company or the local authority or the association or the institution, as the case may be, in respect of which such company or authority or association or institution has furnished a certificate referred to in clause (a) of sub-section (2) or the deduction claimed by a company under the proviso to sub-section (1) shall be deemed to be the income of such company or authority or association or institution, as the case may be, for the previous year in which such approval or notification is withdrawn and tax shall be charged on such income at the maximum marginal rate in force for that year.”

Amendment
of section
35CCB.

17. In section 35CCB of the Income-tax Act, in sub-section (1), in the opening portion, for the words “Where an assessee incurs any expenditure”, the words, figures and letters “Where an assessee incurs any expenditure on or before the 31st day of March, 2002” shall be substituted with effect from the 1st day of April, 2003.

Amendment
of section
35DDA.

18. In section 35DDA of the Income-tax Act, for sub-section (2), the following sub-sections shall be substituted and shall be deemed to have been substituted with effect from the 1st day of April, 2001, namely:—

“(2) Where the assessee, being an Indian company, is entitled to the deduction under sub-section (1) and the undertaking of such Indian company entitled to the deduction under sub-section (1) is transferred, before the expiry of the period specified in that sub-section, to another Indian company in a scheme of amalgamation, the provisions of this section shall, as far as may be, apply to the amalgamated company as they would have applied to the amalgamating company if the amalgamation had not taken place.

(3) Where the undertaking of an Indian company entitled to the deduction under sub-section (1) is transferred, before the expiry of the period specified in that sub-section, to another company in a scheme of demerger, the provisions of this section shall, as far as may be, apply to the resulting company, as they would have applied to the demerged company, if the demerger had not taken place.

(4) Where there has been reorganisation of business, whereby a firm is succeeded by a company fulfilling the conditions laid down in clause (xiii) of section 47 or a proprietary concern is succeeded by a company fulfilling the conditions laid down in clause (xiv) of section 47, the provisions of this section shall, as far as may be, apply to the successor company, as they would have applied to the firm or the proprietary concern, if reorganisation of business had not taken place.

(5) No deduction shall be allowed in respect of the expenditure mentioned in sub-section (1) in the case of the amalgamating company referred to in sub-section (2), in the case of demerged company referred to in sub-section (3) and in the case of a firm or proprietary concern referred to in sub-section (4) of this section, for the previous year in which amalgamation, demerger or succession, as the case may be, takes place.

(6) No deduction shall be allowed in respect of the expenditure mentioned in sub-section (1) under any other provision of this Act.”

19. In section 36 of the Income-tax Act, in sub-section (1), in clause (viii), with effect from the 1st day of April, 2003,—

Amendment
of section 36.

(i) in sub-clause (a),—

(A) for the words "not exceeding five per cent.", the words "not exceeding seven and one-half per cent." shall be substituted;

(B) after the proviso and before the *Explanation*, the following proviso shall be inserted, namely:—

'Provided further that for the relevant assessment years commencing on or after the 1st day of April, 2003 and ending before the 1st day of April, 2005, the provisions of the first proviso shall have effect as if for the words "five per cent.", the words "ten per cent." had been substituted.';

(ii) in sub-clause (c), the following proviso shall be inserted, namely:—

"Provided that a public financial institution or a State financial corporation or a State industrial investment corporation referred to in this sub-clause shall, at its option, be allowed in any of the two consecutive assessment years commencing on or after the 1st day of April, 2003 and ending before the 1st day of April, 2005, deduction in respect of any provision made by it for any assets classified by the Reserve Bank of India as doubtful assets or loss assets in accordance with the guidelines issued by it in this behalf, of an amount not exceeding ten per cent. of the amount of such assets shown in the books of account of such institution or corporation, as the case may be, on the last day of the previous year."

20. In section 40 of the Income-tax Act,—

Amendment
of section 40.

(i) in clause (a), after sub-clause (iv), the following sub-clause shall be inserted with effect from the 1st day of April, 2003, namely:—

"(v) any tax actually paid by an employer referred to in clause (10CC) of section 10;"

(ii) in clause (b), in sub-clause (iv), for the words "eighteen per cent.", the words "twelve per cent." shall be substituted with effect from the 1st day of June, 2002.

21. For section 43A of the Income-tax Act, the following section shall be substituted with effect from the 1st day of April, 2003, namely:—

Substitution of
new section for
section 43A.

'43A. Notwithstanding anything contained in any other provision of this Act, where an assessee has acquired any asset in any previous year from a country outside India for the purposes of his business or profession and, in consequence of a change in the rate of exchange during any previous year after the acquisition of such asset, there is an increase or reduction in the liability of the assessee as expressed in Indian currency (as compared to the liability existing at the time of acquisition of the asset) at the time of making payment—

Special
provisions
consequential
to changes in
rate of
exchange of
currency.

(a) towards the whole or a part of the cost of the asset; or

(b) towards repayment of the whole or a part of the moneys borrowed by him from any person, directly or indirectly, in any foreign currency specifically for the purpose of acquiring the asset along with interest, if any,

the amount by which the liability as aforesaid is so increased or reduced during such previous year and which is taken into account at the time of making the payment, irrespective of the method of accounting adopted by the assessee, shall be added to, or, as the case may be, deducted from—

(i) the actual cost of the asset as defined in clause (1) of section 43; or

(ii) the amount of expenditure of a capital nature referred to in clause (iv) of sub-section (1) of section 35; or

(iii) the amount of expenditure of a capital nature referred to in section 35A; or

(iv) the amount of expenditure of a capital nature referred to in clause (ix) of sub-section (1) of section 36; or

(v) the cost of acquisition of a capital asset (not being a capital asset referred to in section 50) for the purposes of section 48,

and the amount arrived at after such addition or deduction shall be taken to be the actual cost of the asset or the amount of expenditure of a capital nature or, as the case may be, the cost of acquisition of the capital asset as aforesaid:

Provided that where an addition to or deduction from the actual cost or expenditure or cost of acquisition has been made under this section, as it stood immediately before its substitution by the Finance Act, 2002, on account of an increase or reduction in the liability as aforesaid, the amount to be added to, or, as the case may be, deducted under this section from, the actual cost or expenditure or cost of acquisition at the time of making the payment shall be so adjusted that the total amount added to, or, as the case may be, deducted from, the actual cost or expenditure or cost of acquisition, is equal to the increase or reduction in the aforesaid liability taken into account at the time of making payment.

Explanation 1.—In this section, unless the context otherwise requires,—

(a) “rate of exchange” means the rate of exchange determined or recognised by the Central Government for the conversion of Indian currency into foreign currency or foreign currency into Indian currency;

(b) “foreign currency” and “Indian currency” have the meanings respectively assigned to them in section 2 of the Foreign Exchange Management Act, 1999.

42 of 1999.

Explanation 2.—Where the whole or any part of the liability aforesaid is met, not by the assessee, but, directly or indirectly, by any other person or authority, the liability so met shall not be taken into account for the purposes of this section.

Explanation 3.—Where the assessee has entered into a contract with an authorised dealer as defined in section 2 of the Foreign Exchange Management Act, 1999, for providing him with a specified sum in a foreign currency on or after a stipulated future date at the rate of exchange specified in the contract to enable him to meet the whole or any part of the liability aforesaid, the amount, if any, to be added to, or deducted from, the actual cost of the asset or the amount of expenditure of a capital nature or, as the case may be, the cost of acquisition of the capital asset under this section shall, in respect of so much of the sum specified in the contract as is available for discharging the liability aforesaid, be computed with reference to the rate of exchange specified therein.

42 of 1999.

Amendment
of section
44AE.

22. In section 44AE of the Income-tax Act, in sub-section (2), with effect from the 1st day of April, 2003,—

(a) in clause (i), for the words “two thousand rupees”, the words “three thousand five hundred rupees” shall be substituted;

(b) in clause (ii), for the words “one thousand eight hundred rupees”, the words “three thousand one hundred and fifty rupees” shall be substituted.

Amendment
of section 47.

23. In section 47 of the Income-tax Act, in clause (xv), after the words and figures “the Securities and Exchange Board of India, established under section 3 of the Securities and Exchange Board of India Act, 1992”, the words, brackets and figures “or the Reserve Bank of India constituted under sub-section (1) of section 3 of the Reserve Bank of India Act, 1934” shall be inserted with effect from the 1st day of April, 2003.

15 of 1992.
2 of 1934.

Insertion of
new section
50C.

24. After section 50B of the Income-tax Act, the following section shall be inserted with effect from the 1st day of April, 2003, namely:—

‘50C. (1) Where the consideration received or accruing as a result of the transfer by an assessee of a capital asset, being land or building or both, is less than the value adopted or assessed by any authority of a State Government (hereafter in this section referred to as the “stamp valuation authority”) for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed shall, for the purposes of section 48, be deemed to be the full value of the consideration received or accruing as a result of such transfer.

Special provision for full value of consideration in certain cases.

(2) Without prejudice to the provisions of sub-section (1), where—

(a) the assessee claims before any Assessing Officer that the value adopted or assessed by the stamp valuation authority under sub-section (1) exceeds the fair market value of the property as on the date of transfer;

(b) the value so adopted or assessed by the stamp valuation authority under sub-section (1) has not been disputed in any appeal or revision or no reference has been made before any other authority, court or the High Court,

the Assessing Officer may refer the valuation of the capital asset to a Valuation Officer and where any such reference is made, the provisions of sub-sections (2), (3), (4), (5) and (6) of section 16A, clause (i) of sub-section (1) and sub-sections (6) and (7) of section 23A, sub-section (5) of section 24, section 34AA, section 35 and section 37 of the Wealth-tax Act, 1957, shall, with necessary modifications, apply in relation to such reference as they apply in relation to a reference made by the Assessing Officer under sub-section (1) of section 16A of that Act.

27 of 1957.

Explanation.—For the purposes of this section, “Valuation Officer” shall have the same meaning as in clause (r) of section 2 of the Wealth-tax Act, 1957.

27 of 1957.

(3) Subject to the provisions contained in sub-section (2), where the value ascertained under sub-section (2) exceeds the value adopted or assessed by the stamp valuation authority referred to in sub-section (1), the value so adopted or assessed by such authority shall be taken as the full value of the consideration received or accruing as a result of the transfer.’

25. In section 54EC of the Income-tax Act, in the *Explanation* occurring at the end, in clause (b), after sub-clause (ii), the following sub-clause shall be inserted with effect from the 1st day of April, 2003, namely:—

Amendment of section 54EC.

“(iii) on or after the 1st day of April, 2002, by the National Housing Bank established under sub-section (1) of section 3 of the National Housing Bank Act, 1987 or by the Small Industries Development Bank of India established under sub-section (1) of section 3 of the Small Industries Development Bank of India Act, 1989.”

53 of 1987.

39 of 1989.

26. In section 55 of the Income-tax Act, with effect from the 1st day of April, 2003,—

Amendment of section 55.

(a) in sub-section (1), in clause (b), in sub-clause (1), after the words “any article or thing”, the words “or right to carry on any business” shall be inserted;

(b) in sub-section (2), in clause (a), after the words “any article or thing”, the words “or right to carry on any business” shall be inserted.

27. For section 70 of the Income-tax Act, the following section shall be substituted with effect from the 1st day of April, 2003, namely:—

Substitution of new section for section 70.

‘70. (1) Save as otherwise provided in this Act, where the net result for any assessment year in respect of any source falling under any head of income, other than “Capital gains”, is a loss, the assessee shall be entitled to have the amount of such loss set off against his income from any other source under the same head.

Set off of loss from one source against income from another source under the same head of income.

(2) Where the result of the computation made for any assessment year under sections 48 to 55 in respect of any short-term capital asset is a loss, the assessee shall

be entitled to have the amount of such loss set off against the income, if any, as arrived at under a similar computation made for the assessment year in respect of any other capital asset.

(3) Where the result of the computation made for any assessment year under sections 48 to 55 in respect of any capital asset (other than a short-term capital asset) is a loss, the assessee shall be entitled to have the amount of such loss set off against the income, if any, as arrived at under a similar computation made for the assessment year in respect of any other capital asset not being a short-term capital asset.'.

Amendment
of section
72A.

28. In section 72A of the Income-tax Act, in sub-section (7), in clause (aa), after sub-clause (iii), the following sub-clause shall be inserted with effect from the 1st day of April, 2003, namely:—

“(iiiia) the business of providing telecommunication services, whether basic or cellular, including radio paging, domestic satellite service, network of trunking, broadband network and internet services; or”.

Amendment of
section 74.

29. In section 74 of the Income-tax Act, with effect from the 1st day of April, 2003,—

(a) for sub-section (1), the following sub-section shall be substituted, namely:—

“(1) Where in respect of any assessment year, the net result of the computation under the head “Capital gains” is a loss to the assessee, the whole loss shall, subject to the other provisions of this Chapter, be carried forward to the following assessment year, and—

(a) in so far as such loss relates to a short-term capital asset, it shall be set off against income, if any, under the head “Capital gains” assessable for that assessment year in respect of any other capital asset;

(b) in so far as such loss relates to a long-term capital asset, it shall be set off against income, if any, under the head “Capital gains” assessable for that assessment year in respect of any other capital asset not being a short-term capital asset;

(c) if the loss cannot be wholly so set off, the amount of loss not so set off shall be carried forward to the following assessment year and so on.”;

(b) sub-section (3) shall be omitted.

Amendment of
section 80G.

30. In section 80G of the Income-tax Act,—

(a) in sub-section (2), with effect from the 1st day of April, 2003,—

(i) in clause (a), for sub-clause (vi), the following sub-clause shall be substituted, namely:—

“(vi) an authority constituted in India by or under any law enacted either for the purpose of dealing with and satisfying the need for housing accommodation or for the purpose of planning, development or improvement of cities, towns and villages, or for both;”;

(ii) in clause (c), for the words, brackets and figures “as notified by the Central Government under clause (23) of section 10”, the words “established in India, as the Central Government may, having regard to the prescribed guidelines, by notification in the Official Gazette, specify in this behalf” shall be substituted;

(b) in sub-section (5), with effect from the 1st day of April, 2003,—

(i) in clause (i), the words, brackets and figures “or clause (23)” shall be omitted;

(ii) in clause (v), the words, brackets and figures “or is an institution approved by the Central Government for the purposes of clause (23) of section 10,” shall be omitted;

(c) in sub-section (5C), with effect from the 3rd day of February, 2001,—

(i) in the opening portion, for the words "This sub-section", the words "This section" shall be substituted and shall be deemed to have been substituted;

(ii) in clause (iii), for the words, figures and letters "on or before the 31st day of March, 2002", the words, figures and letters "on or before the 31st day of March, 2003" shall be substituted and shall be deemed to have been substituted;

(iii) for clause (iv), the following clause shall be substituted and shall be deemed to have been substituted, namely:—

"(iv) the amount of donation remaining unutilised on the 31st day of March, 2003 is transferred to the Prime Minister's National Relief Fund on or before the 31st day of March, 2003;"

(iv) in clause (v), for the words, figures and letters "on or before the 30th day of June, 2002", the words, figures and letters "on or before the 30th day of June, 2003" shall be substituted and shall be deemed to have been substituted;

(d) for *Explanation 4*, the following *Explanation* shall be substituted with effect from the 1st day of April, 2003, namely:—

"*Explanation 4.*—For the purposes of this section, an association or institution having as its object the control, supervision, regulation or encouragement in India of such games or sports as the Central Government may, by notification in the Official Gazette, specify in this behalf, shall be deemed to be an institution established in India for a charitable purpose."

31. In section 80GGA of the Income-tax Act, in sub-section (2), with effect from the 1st day of April, 2003,—

Amendment of section 80GGA.

(i) in clause (c), in the opening portion, for the words "any sum paid by the assessee in the previous year", the words, figures and letters "any sum paid by the assessee in any previous year ending on or before the 31st day of March, 2002" shall be substituted;

(ii) in clause (cc), in the opening portion, for the words "any sum paid by the assessee in the previous year", the words, figures and letters "any sum paid by the assessee in any previous year ending on or before the 31st day of March, 2002" shall be substituted.

32. In section 80HHD of the Income-tax Act, in sub-section (1), with effect from the 1st day of April, 2003,—

Amendment of section 80HHD.

(i) in clause (c), for the words "twenty per cent.", at both the places where they occur, the words "twenty-five per cent." shall be substituted;

(ii) in clause (d), for the words "ten per cent.", at both the places where they occur, the words "fifteen per cent." shall be substituted.

33. In section 80-IA of the Income-tax Act, with effect from the 1st day of April, 2003,—

Amendment of section 80-IA.

(a) in sub-section (2), after the words "industrial park", the words, brackets and figures "or develops or develops and operates or maintains and operates a special economic zone referred to in clause (iii) of sub-section (4)" shall be inserted;

(b) in sub-section (7), for the words "Where the assessee is a person other than a company or a co-operative society, the deduction", the words "The deduction" shall be substituted.

34. In section 80-IB of the Income-tax Act, with effect from the 1st day of April, 2003,—

Amendment of section 80-IB.

(a) in sub-sections (4) and (5), for the figures, letters and words "31st day of March, 2002" wherever they occur, the figures, letters and words "31st day of March, 2004" shall be substituted;

(b) after sub-section (7), the following sub-sections shall be inserted, namely:—

“(7A) The amount of deduction in the case of any multiplex theatre shall be—

(a) fifty per cent. of the profits and gains derived, from the business of building, owning and operating a multiplex theatre, for a period of five consecutive years beginning from the initial assessment year in any place:

Provided that nothing contained in this clause shall apply to a multiplex theatre located at a place within the municipal jurisdiction (whether known as a municipality, municipal corporation, notified area committee or a cantonment board or by any other name) of Chennai, Delhi, Mumbai or Kolkata;

(b) the deduction under clause (a) shall be allowable only if—

(i) such multiplex theatre is constructed at any time during the period beginning on the 1st day of April, 2002 and ending on the 31st day of March, 2005;

(ii) the business of the multiplex theatre is not formed by the splitting up, or the reconstruction, of a business already in existence or by the transfer to a new business of any building or of any machinery or of plant previously used for any purpose;

(iii) the assessee furnishes alongwith the return of income, the report of an audit in such form and containing such particulars as may be prescribed and duly signed and verified by an accountant, as defined in the *Explanation* below sub-section (2) of section 288, certifying that the deduction has been correctly claimed.

(7B) The amount of deduction in the case of any convention centre shall be—

(a) fifty per cent. of the profits and gains derived, by the assessee from the business of building, owning and operating a convention centre, for a period of five consecutive years beginning from the initial assessment year;

(b) the deduction under clause (a) shall be allowable only if—

(i) such convention centre is constructed at any time during the period beginning on the 1st day of April, 2002 and ending on the 31st day of March, 2005;

(ii) the business of the convention centre is not formed by the splitting up, or the reconstruction, of a business already in existence or by the transfer to a new business of any building or of any machinery or plant previously used for any purpose;

(iii) the assessee furnishes alongwith the return of income, the report of an audit in such form and containing such particulars as may be prescribed, and duly signed and verified by an accountant, as defined in the *Explanation* below sub-section (2) of section 288, certifying that the deduction has been correctly claimed.”;

(c) in sub-section (14),—

(i) after clause (a), the following clause shall be inserted, namely:—

“(aa) “convention centre” means a building of a prescribed area comprising of convention halls to be used for the purpose of holding conferences and seminars, being of

such size and number and having such other facilities and amenities, as may be prescribed;";

(ii) in clause (c), after sub-clause (iv), the following sub-clauses shall be inserted, namely:—

"(v) in the case of a multiplex theatre, means the assessment year relevant to the previous year in which a cinema hall, being a part of the said multiplex theatre, starts operating on a commercial basis;

(vi) in the case of a convention centre, means the assessment year relevant to the previous year in which the convention centre starts operating on a commercial basis;";

(iii) after clause (d), the following clause shall be inserted, namely:—

"(da) "multiplex theatre" means a building of a prescribed area, comprising of two or more cinema theatres and commercial shops of such size and number and having such other facilities and amenities as may be prescribed;".

35. In section 80L of the Income-tax Act, in sub-section (I), after clause (iiia), the following clauses shall be inserted with effect from the 1st day of April, 2003, namely:—

Amendment of section 80L.

"(iv) dividends from any Indian company;

52 of 1963.

(v) income received in respect of units from the Unit Trust of India established under the Unit Trust of India Act, 1963 other than the income arising from transfer of such units;

(va) income received in respect of units of a Mutual Fund specified under clause (23D) of section 10 other than the income arising from transfer of such units;".

36. After section 80L of the Income-tax Act, the following section shall be inserted with effect from the 1st day of April, 2003, namely:—

Insertion of new section 80M.

"80M. (I) Where the gross total income of a domestic company, in any previous year, includes any income by way of dividends from another domestic company, there shall, in accordance with and subject to the provisions of this section, be allowed, in computing the total income of such domestic company, a deduction of an amount equal to so much of the amount of income by way of dividends from another domestic company as does not exceed the amount of dividend distributed by the first-mentioned domestic company on or before the due date.

Deduction in respect of certain inter-corporate dividends.

(2) Where any deduction, in respect of the amount of dividend distributed by the domestic company, has been allowed under sub-section (I) in any previous year, no deduction shall be allowed in respect of such amount in any other previous year.

Explanation.—For the purposes of this section, the expression "due date" means the date for furnishing the return of income under sub-section (I) of section 139."

37. In section 88 of the Income-tax Act, with effect from the 1st day of April, 2003,—

Amendment of section 88.

(a) for sub-section (I), the following sub-section shall be substituted, namely:—

"(I) Subject to the provisions of this section, an assessee, being an individual, or a Hindu undivided family, shall be entitled to a deduction, from the amount of income-tax (as computed before allowing the deductions under this Chapter) on his total income with which he is chargeable for any assessment year, of an amount equal to—

(i) in the case of an individual or a Hindu undivided family, whose gross total income before giving effect to deductions under Chapter VI-A, is one lakh fifty thousand rupees or less, twenty per cent. of the aggregate of the sums referred to in sub-section (2);

Provided that an individual shall be entitled to a deduction of an amount equal to thirty per cent. of the aggregate of the sums referred to in sub-section (2) if his income under the head "Salaries"—

(a) does not exceed one lakh rupees during the previous year before allowing the deduction under section 16; and

(b) is not less than ninety per cent. of his gross total income, as defined in sub-section (5) of section 80B;

(ii) in the case of an individual or a Hindu undivided family, whose gross total income before giving effect to deductions under Chapter VI-A, is more than one lakh fifty thousand rupees but does not exceed five lakh rupees, fifteen per cent. of the aggregate of the sums referred to in sub-section (2);

(iii) in the case of an individual or a Hindu undivided family, whose gross total income before giving effect to deductions under Chapter VI-A, exceeds five lakh rupees, *nil.*;

(b) in sub-section (2), the words "out of his income chargeable to tax" shall be omitted;

(c) after sub-section (2), the following sub-section shall be inserted, namely:—

"(3) The sums referred to in sub-section (2) shall be paid or deposited at any time during the previous year, and the assessee, being an individual or a Hindu undivided family, shall be entitled to a deduction under sub-section (1) on so much of the aggregate of such sums paid or deposited as does not exceed the total income of the assessee, chargeable to tax during the relevant previous year.";

(d) for sub-section (5), the following sub-section shall be substituted, namely:—

"(5) Where the aggregate of any sums specified in clause (i) to clause (xvii) of sub-section (2) exceeds an amount of one hundred thousand rupees, a deduction under sub-section (1) shall be allowed with reference to so much of the aggregate as does not exceed an amount of one hundred thousand rupees:

Provided that where the aggregate of any sums specified in clause (i) to clause (xv) of sub-section (2) exceeds an amount of seventy thousand rupees, a deduction under sub-section (1) in respect of such sums shall be allowed with reference to so much of the aggregate as does not exceed an amount of seventy thousand rupees;

Provided further that where the aggregate of any sums specified in clause (xv) of sub-section (2) exceeds an amount of twenty thousand rupees, a deduction under sub-section (1) in respect of such sums shall be allowed with reference to so much of the aggregate as does not exceed an amount of twenty thousand rupees.";

(e) sub-section (5A) shall be omitted;

(f) sub-section (6) shall be omitted.

Substitution of new section for section 89.

38. For section 89 of the Income-tax Act, the following section shall be substituted and shall be deemed to have been substituted with effect from the 1st day of April, 1996, namely:—

Relief when salary, etc., is paid in arrears or in advance.

"89. Where an assessee is in receipt of a sum in the nature of salary, being paid in arrears or in advance or is in receipt, in any one financial year, of salary for more than twelve months or a payment which under the provisions of clause (3) of section 17 is a profit in lieu of salary, or is in receipt of a sum in the nature of family pension as

defined in the *Explanation* to clause (iia) of section 57, being paid in arrears, due to which his total income is assessed at a rate higher than that at which it would otherwise have been assessed, the Assessing Officer shall, on an application made to him in this behalf, grant such relief as may be prescribed.”

39. For section 92 of the Income-tax Act, the following section shall be substituted, namely:—

Substitution of new section for section 92.

“92. (1) Any income arising from an international transaction shall be computed having regard to the arm's length price.

Computation of income from international transaction having regard to arm's length price.

Explanation.—For the removal of doubts, it is hereby clarified that the allowance for any expense or interest arising from an international transaction shall also be determined having regard to the arm's length price.

(2) Where in an international transaction, two or more associated enterprises enter into a mutual agreement or arrangement for the allocation or apportionment of, or any contribution to, any cost or expense incurred or to be incurred in connection with a benefit, service or facility provided or to be provided to any one or more of such enterprises, the cost or expense allocated or apportioned to, or, as the case may be, contributed by, any such enterprise shall be determined having regard to the arm's length price of such benefit, service or facility, as the case may be.

(3) The provisions of this section shall not apply in a case where the computation of income under sub-section (1) or the determination of the allowance for any expense or interest under that sub-section, or the determination of any cost or expense allocated or apportioned, or, as the case may be, contributed under sub-section (2), has the effect of reducing the income chargeable to tax or increasing the loss, as the case may be, computed on the basis of entries made in the books of account in respect of the previous year in which the international transaction was entered into.”

40. In section 92A of the Income-tax Act, in sub-section (2), for the brackets, figure and words “(2) Two enterprises shall be deemed to be associated enterprises if, at any time during the previous year,—”, the brackets, figures and words “(2) For the purposes of sub-section (1), two enterprises shall be deemed to be associated enterprises if, at any time during the previous year,—” shall be substituted.

Amendment of section 92A.

41. In section 92C of the Income-tax Act,—

Amendment of section 92C.

(a) in sub-section (2), for the proviso, the following proviso shall be substituted, namely:—

“Provided that where more than one price is determined by the most appropriate method, the arm's length price shall be taken to be the arithmetical mean of such prices, or, at the option of the assessee, a price which may vary from the arithmetical mean by an amount not exceeding five per cent. of such arithmetical mean.”;

(b) in sub-section (4), in the second proviso, after the words “from which tax has been deducted”, the words “or was deductible” shall be inserted.

42. After section 92C of the Income-tax Act, the following section shall be inserted with effect from the 1st day of June, 2002, namely:—

Insertion of new section 92CA.

“92CA. (1) Where any person, being the assessee, has entered into an international transaction in any previous year, and the Assessing Officer considers it necessary or expedient so to do, he may, with the previous approval of the Commissioner, refer the computation of the arm's length price in relation to the said international transaction under section 92C to the Transfer Pricing Officer.

Reference to Transfer Pricing Officer.

(2) Where a reference is made under sub-section (1), the Transfer Pricing Officer shall serve a notice on the assessee requiring him to produce or cause to be produced

on a date to be specified therein, any evidence on which the assessee may rely in support of the computation made by him of the arm's length price in relation to the international transaction referred to in sub-section (1).

(3) On the date specified in the notice under sub-section (2), or as soon thereafter as may be, after hearing such evidence as the assessee may produce, including any information or documents referred to in sub-section (3) of section 92D and after considering such evidence as the Transfer Pricing Officer may require on any specified points and after taking into account all relevant materials which he has gathered, the Transfer Pricing Officer shall, by order in writing, determine the arm's length price in relation to the international transaction in accordance with sub-section (3) of section 92C and send a copy of his order to the Assessing Officer and to the assessee.

(4) On receipt of the order under sub-section (3), the Assessing Officer shall proceed to compute the total income of the assessee under sub-section (4) of section 92C having regard to the arm's length price determined under sub-section (3) by the Transfer Pricing Officer.

(5) With a view to rectifying any mistake apparent from the record, the Transfer Pricing Officer may amend any order passed by him under sub-section (3), and the provisions of section 154 shall, so far as may be, apply accordingly.

(6) Where any amendment is made by the Transfer Pricing Officer under sub-section (5), he shall send a copy of his order to the Assessing Officer who shall thereafter proceed to amend the order of assessment in conformity with such order of the Transfer Pricing Officer.

(7) The Transfer Pricing Officer may, for the purposes of determining the arm's length price under this section, exercise all or any of the powers specified in clauses (a) to (d) of sub-section (1) of section 131 or sub-section (6) of section 133.

Explanation.—For the purposes of this section, "Transfer Pricing Officer" means a Joint Commissioner or Deputy Commissioner or Assistant Commissioner authorised by the Board to perform all or any of the functions of an Assessing Officer specified in sections 92C and 92D in respect of any person or class of persons."

43. In section 92F of the Income-tax Act,—

(a) in clause (iii), after the words "or the provision of services of any kind", the words "or in carrying out any work in pursuance of a contract," shall be inserted;

(b) after clause (iii), the following clause shall be inserted, namely:—

'(iiia) "permanent establishment", referred to in clause (iii), includes a fixed place of business through which the business of the enterprise is wholly or partly carried on;';

(c) for clause (iv), the following clause shall be substituted, namely:—

'(iv) "specified date" shall have the same meaning as assigned to "due date" in Explanation 2 below sub-section (1) of section 139;';

44. In section 113 of the Income-tax Act, the following proviso shall be inserted with effect from the 1st day of June, 2002, namely:—

"Provided that the tax chargeable under this section shall be increased by a surcharge, if any, levied by any Central Act and applicable in the assessment year relevant to the previous year in which the search is initiated under section 132 or the requisition is made under section 132A."

45. In section 115A of the Income-tax Act, in sub-section (1), in clause (a), the words, figures and letter "other than dividends referred to in section 115-O", at both the places where they occur, shall be omitted with effect from the 1st day of April, 2003.

Amendment
of section
92F.

Amendment
of section
113.

Amendment
of section
115A.

46. In section 115AC of the Income-tax Act,—

Amendment
of section
115AC.

(a) the words, figures and letter “other than dividends referred to in section 115-O”, wherever they occur, shall be omitted with effect from the 1st day of April, 2003;

(b) in sub-section (1), in clause (b),—

(i) in sub-clause (iii), for the word “re-issued”, the words “issued or re-issued” shall be substituted;

(ii) sub-clause (iv) shall be omitted.

47. In section 115ACA of the Income-tax Act, the words, figures and letter “other than dividends referred to in section 115-O”, wherever they occur, shall be omitted with effect from the 1st day of April, 2003.

Amendment
of section
115ACA.

48. In section 115AD of the Income-tax Act, in sub-section (1), in clause (a), the words, figures and letter “other than income by way of dividends referred to in section 115-O” shall be omitted with effect from the 1st day of April, 2003.

Amendment
of section
115AD.

49. After section 115BBA of the Income-tax Act, the following section shall be inserted with effect from the 1st day of April, 2003, namely:—

Insertion of
new section
115BBB.

‘115BBB. (1) Where the total income of an assessee includes any income from units of an open-ended equity oriented fund of the Unit Trust of India or of a Mutual Fund, the income-tax payable shall be the aggregate of—

Tax on income
from units of
an open-ended
equity oriented
fund of the
Unit Trust of
India or of
Mutual Funds.

(a) the amount of income-tax calculated on income from units of an open-ended equity oriented fund of the Unit Trust of India or of a Mutual Fund, at the rate of ten per cent.; and

(b) the amount of income-tax with which the assessee would have been chargeable had his total income been reduced by the amount of income referred to in clause (a).

(2) Nothing contained in sub-section (1) shall apply in relation to any income from units of an open-ended equity oriented fund of the Unit Trust of India or of the Mutual Fund arising after the 31st day of March, 2003.

Explanation.—For the purposes of this section, the expressions “Mutual Fund”, “open-ended equity oriented fund” and “Unit Trust of India” shall have the meanings respectively assigned to them in the *Explanation* to section 115T.’

50. In section 115C of the Income-tax Act, in clause (c), the words, figures and letter “other than dividends referred to in section 115-O” shall be omitted with effect from the 1st day of April, 2003.

Amendment
of section
115C.

51. In section 115JA of the Income-tax Act, in sub-section (2), in the *Explanation*, for clause (iii) and the *Explanation* thereto, the following shall be substituted and shall be deemed to have been substituted with effect from the 1st day of April, 1997, namely:—

Amendment
of section
115JA.

“(iii) the amount of loss brought forward or unabsorbed depreciation, whichever is less as per books of account.

Explanation.—For the purposes of this clause,—

(a) the loss shall not include depreciation;

(b) the provisions of this clause shall not apply if the amount of loss brought forward or unabsorbed depreciation is nil; or”.

52. In section 115JB of the Income-tax Act,—

Amendment
of section
115JB.

(a) in sub-section (1), for the words “the tax payable for the relevant previous year shall be deemed to be seven and one-half per cent. of such book profit”, the

words "such book profit shall be deemed to be the total income of the assessee and the tax payable by the assessee on such total income shall be the amount of income-tax at the rate of seven and one-half per cent." shall be substituted and shall be deemed to have been substituted with effect from the 1st day of April, 2001;

(b) in sub-section (2), in the *Explanation* below the second proviso,—

(i) in clause (b), after the words "by whatever name called", the words, figures and letters "other than a reserve specified under section 33AC" shall be inserted with effect from the 1st day of April, 2003;

(ii) for clause (i) and the proviso, the following shall be substituted and shall be deemed to have been substituted with effect from the 1st day of April, 2001, namely:—

"(i) the amount withdrawn from any reserve or provision (excluding a reserve created before the 1st day of April, 1997 otherwise than by way of a debit to the profit and loss account), if any such amount is credited to the profit and loss account:

Provided that where this section is applicable to an assessee in any previous year, the amount withdrawn from reserves created or provisions made in a previous year relevant to the assessment year commencing on or after the 1st day of April, 1997 shall not be reduced from the book profit unless the book profit of such year has been increased by those reserves or provisions (out of which the said amount was withdrawn) under this *Explanation* or *Explanation* below the second proviso to section 115JA, as the case may be; or";

(iii) for clause (iii) and the *Explanation*, the following shall be substituted and shall be deemed to have been substituted with effect from the 1st day of April, 2001, namely:—

"(iii) the amount of loss brought forward or unabsorbed depreciation, whichever is less as per books of account.

Explanation.—For the purposes of this clause,—

(a) the loss shall not include depreciation;

(b) the provisions of this clause shall not apply if the amount of loss brought forward or unabsorbed depreciation is *nil*; or".

Amendment of
section 115-O.

53. In section 115-O of the Income-tax Act, in sub-section (1), after the words, figures and letters "on or after the 1st day of June, 1997", the words, figures and letters "but on or before the 31st day of March, 2002" shall be inserted with effect from the 1st day of April, 2003.

Amendment
of section
115R.

54. In section 115R of the Income-tax Act, with effect from the 1st day of April, 2003,—

(a) in sub-section (1), for the words "any amount of income distributed by the Unit Trust of India to its unit holders", the words, figures and letters "any amount of income distributed on or before the 31st day of March, 2002 by the Unit Trust of India to its unit holders" shall be substituted;

(b) in sub-section (2), for the words "any amount of income distributed by a Mutual Fund to its unit holders", the words, figures and letters "any amount of income distributed on or before the 31st day of March, 2002 by a Mutual Fund to its unit holders" shall be substituted.

Amendment
of section
119.

55. In section 119 of the Income-tax Act, in sub-section (2), in clause (a), after the figures "155", the figures and letters "158BFA" shall be inserted with effect from the 1st day of June, 2002.

Amendment of
section 132.

56. In section 132 of the Income-tax Act, with effect from the 1st day of June, 2002,—

(a) in sub-section (1), after clause (iia), the following clause shall be inserted, namely:—

“(iib) require any person who is found to be in possession or control of any books of account or other documents maintained in the form of electronic record as defined in clause (i) of sub-section (1) of section 2 of the Information Technology Act, 2000, to afford the authorised officer the necessary facility to inspect such books of account or other documents;”;

(b) sub-sections (5) to (7) shall be omitted;

(c) in sub-section (8), for the words “one hundred and eighty days from the date of the seizure”, the words, brackets, letters and figures “thirty days from the date of the order of assessment under clause (c) of section 158BC” shall be substituted;

(d) for sub-section (8A), the following sub-section shall be substituted, namely:—

“(8A) An order under sub-section (3) shall not be in force for a period exceeding sixty days from the date of the order.”;

(e) for sub-section (9A), the following sub-section shall be substituted, namely:—

“(9A) Where the authorised officer has no jurisdiction over the person referred to in clause (a) or clause (b) or clause (c) of sub-section (1), the books of account or other documents, or any money, bullion, jewellery or other valuable article or thing (hereafter in this section and in sections 132A and 132B referred to as the assets) seized under that sub-section shall be handed over by the authorised officer to the Assessing Officer having jurisdiction over such person within a period of sixty days from the date on which the last of the authorisations for search was executed and thereupon the powers exercisable by the authorised officer under sub-section (8) or sub-section (9) shall be exercisable by such Assessing Officer.”;

(f) in sub-section (10), after the words “requesting for the return of the books of account or other documents”, the words “and the Board may, after giving the applicant an opportunity of being heard, pass such orders as it thinks fit” shall be inserted;

(g) sub-sections (11), (11A) and (12) shall be omitted;

(h) for *Explanation 1* below sub-section (14), the following *Explanation* shall be substituted, namely:—

‘*Explanation 1.*—For the purposes of sub-section (9A), “execution of an authorisation for search” shall have the same meaning as assigned to it in *Explanation 2* to section 158BE.’

57. For section 132B of the Income-tax Act, the following section shall be substituted with effect from the 1st day of June, 2002,—

‘132B. (1) The assets seized under section 132 or requisitioned under section 132A may be dealt with in the following manner, namely:—

(i) the amount of any existing liability under this Act, the Wealth-tax Act, 1957, the Expenditure-tax Act, 1987, the Gift-tax Act, 1958 and the Interest-tax Act, 1974 and the amount of the liability determined on completion of the assessment under Chapter XIV-B for the block period (including any penalty levied or interest payable in connection with such assessment) and in respect of which such person is in default or is deemed to be in default, may be recovered out of such assets:

Provided that where the nature and source of acquisition of any such asset is explained to the satisfaction of the Assessing Officer, the amount of any existing liability referred to in this clause may be recovered out of such asset and

Substitution of new section for section 132B.

Application of seized or requisitioned assets.

21 of 2000.

27 of 1957.

35 of 1987.

18 of 1958.

45 of 1974.

the remaining portion, if any, of the asset may be released, with the prior approval of the Chief Commissioner or Commissioner, to the person from whose custody the assets were seized:

Provided further that such asset or any portion thereof as is referred to in the first proviso shall be released within a period of one hundred and twenty days from the date on which the last of the authorisations for search under section 132 or for requisition under section 132A, as the case may be, was executed;

(ii) if the assets consist solely of money, or partly of money and partly of other assets, the Assessing Officer may apply such money in the discharge of the liabilities referred to in clause (i) and the assessee shall be discharged of such liability to the extent of the money so applied;

(iii) the assets other than money may also be applied for the discharge of any such liability referred to in clause (i) as remains undischarged and for this purpose such assets shall be deemed to be under distraint as if such distraint was effected by the Assessing Officer or, as the case may be, the Tax Recovery Officer under authorisation from the Chief Commissioner or Commissioner under sub-section (5) of section 226 and the Assessing Officer or, as the case may be, the Tax Recovery Officer may recover the amount of such liabilities by the sale of such assets and such sale shall be effected in the manner laid down in the Third Schedule.

(2) Nothing contained in sub-section (1) shall preclude the recovery of the amount of liabilities aforesaid by any other mode laid down in this Act.

(3) Any assets or proceeds thereof which remain after the liabilities referred to in clause (i) of sub-section (1) are discharged shall be forthwith made over or paid to the persons from whose custody the assets were seized.

(4) (a) The Central Government shall pay simple interest at the rate of eight per cent. per annum on the amount by which the aggregate amount of money seized under section 132 or requisitioned under section 132A, as reduced by the amount of money, if any, released under the first proviso to clause (i) of sub-section (1), and of the proceeds, if any, of the assets sold towards the discharge of the existing liability referred to in clause (i) of sub-section (1), exceeds the aggregate of the amount required to meet the liabilities referred to in clause (i) of sub-section (1) of this section.

(b) Such interest shall run from the date immediately following the expiry of the period of one hundred and twenty days from the date on which the last of the authorisations for search under section 132 or requisition under section 132A was executed to the date of completion of the assessment under Chapter XIV-B.

Explanation.—In this section,—

(i) “block period” shall have the meaning assigned to it in clause (a) of section 158B;

(ii) “execution of an authorisation for search or requisition” shall have the same meaning as assigned to it in *Explanation 2* to section 158BE.’

Amendment
of section
133A.

2002,—

58. In section 133A of the Income-tax Act, with effect from the 1st day of June,

(a) in sub-section (3), after clause (i), the following clause shall be inserted, namely:—

“(ia) impound and retain in his custody for such period as he thinks fit any books of account or other documents inspected by him:

Provided that such income-tax authority shall not—

(a) impound any books of account or other documents except after recording his reasons for so doing; or

(b) retain in his custody any such books of account or other documents for a period exceeding fifteen days (exclusive of holidays) without obtaining the approval of the Chief Commissioner or Director General or Commissioner or Director therefor, as the case may be,";

(b) in sub-section (4), the words "any books of account or other documents or" shall be omitted.

59. In section 139 of the Income-tax Act,—

Amendment
of section
139.

(a) in sub-section (1), in the first proviso, in clause (iii), for the word "telephone", the words "cellular telephone not being a wireless in local loop telephone" shall be substituted;

(b) after sub-section (1), the following sub-section shall be inserted, namely:—

“(1A) Without prejudice to the provisions of sub-section (1), any person, being an individual who is in receipt of income chargeable under the head “Salaries” may, at his option, furnish a return of his income for any previous year to his employer, in accordance with such scheme as may be specified by the Board in this behalf, by notification in the Official Gazette, and subject to such conditions as may be specified therein, and such employer shall furnish all returns of income received by him on or before the due date, in such form (including on a floppy, diskette, magnetic cartridge tape, CD-ROM or any other computer readable media) and manner as may be specified in that scheme, and in such case, any employee who has filed a return of his income to his employer shall be deemed to have furnished a return of income under sub-section (1), and the provisions of this Act shall apply accordingly.”;

(c) after sub-section (4B), the following sub-section shall be inserted with effect from the 1st day of April, 2003, namely:—

“(4C) Every—

(a) scientific research association referred to in clause (21) of section 10;

(b) news agency referred to in clause (22B) of section 10;

(c) association or institution referred to in clause (23A) of section 10;

(d) institution referred to in clause (23B) of section 10;

(e) fund or institution referred to in sub-clause (iv) or trust or institution referred to in sub-clause (v) or any university or other educational institution referred to in sub-clause (vi) or any hospital or other medical institution referred to in sub-clause (via) of clause (23C) of section 10;

(f) trade union referred to in sub-clause (a) or association referred to in sub-clause (b) of clause (24) of section 10,

shall, if the total income in respect of which such scientific research association, news agency, association or institution, fund or trust or university or other educational institution or any hospital or other medical institution or trade union is assessable, without giving effect to the provisions of section 10, exceeds the maximum amount which is not chargeable to income-tax, furnish a return of such income of the previous year in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed and all the provisions of this Act shall, so far as may be, apply as if it were a return required to be furnished under sub-section (1).”;

(d) in sub-section (9), in the *Explanation*, in clause (c), in sub-clause (i), the following proviso shall be inserted with effect from the 1st day of June, 2002, namely:—

“Provided that where the return is not accompanied by proof of the tax, if any, claimed to have been deducted at source, the return of income shall not be regarded as defective if—

(a) a certificate for tax deducted was not furnished under section 203 to the person furnishing his return of income;

(b) such certificate is produced within a period of two years specified under sub-section (14) of section 155;”.

Amendment
of section
143..

60. In section 143 of the Income-tax Act,—

(a) for sub-section (2), the following sub-section shall be substituted with effect from the 1st day of June, 2002, namely:—

“(2) Where a return has been furnished under section 139, or in response to a notice under sub-section (1) of section 142, the Assessing Officer shall,—

(i) where he has reason to believe that any claim of loss, exemption, deduction, allowance or relief made in the return is inadmissible, serve on the assessee a notice specifying particulars of such claim of loss, exemption, deduction, allowance or relief and require him, on a date to be specified therein to produce, or cause to be produced, any evidence or particulars specified therein or on which the assessee may rely, in support of such claim;

(ii) notwithstanding anything contained in clause (i), if he considers it necessary or expedient to ensure that the assessee has not under-stated the income or has not computed excessive loss or has not under-paid the tax in any manner, serve on the assessee a notice requiring him, on a date to be specified therein, either to attend his office or to produce, or cause to be produced, any evidence on which the assessee may rely in support of the return:

Provided that no notice under this sub-section shall be served on the assessee after the expiry of twelve months from the end of the month in which the return is furnished.”;

(b) for sub-section (3), the following sub-section shall be substituted, with effect from the 1st day of June, 2002, namely:—

“(3) On the day specified in the notice,—

(i) issued under clause (i) of sub-section (2), or as soon afterwards as may be, after hearing such evidence and after taking into account such particulars as the assessee may produce, the Assessing Officer shall, by an order in writing, allow or reject the claim or claims specified in such notice and make an assessment determining the total income or loss accordingly, and determine the sum payable by the assessee on the basis of such assessment;

(ii) issued under clause (ii) of sub-section (2), or as soon afterwards as may be, after hearing such evidence as the assessee may produce and such other evidence as the Assessing Officer may require on specified points, and after taking into account all relevant material which he has gathered, the Assessing Officer shall, by an order in writing, make an assessment of the total income or loss of the assessee, and determine the sum payable by him or refund of any amount due to him on the basis of such assessment.”;

(c) after sub-section (3), the following proviso shall be inserted with effect from the 1st day of April, 2003, namely:—

“Provided that in the case of a—

(a) scientific research association referred to in clause (21) of section 10;

(b) news agency referred to in clause (22B) of section 10;

(c) association or institution referred to in clause (23A) of section 10;

(d) institution referred to in clause (23B) of section 10;

(e) fund or institution referred to in sub-clause (iv) or trust or institution referred to in sub-clause (v) or any university or other educational institution referred to in sub-clause (vi) or any hospital or other medical institution referred to in sub-clause (via) of clause (23C) of section 10,

which is required to furnish the return of income under sub-section (4C) of section 139, no order making an assessment of the total income or loss of such scientific research association, news agency, association or institution or fund or trust or university or other educational institution or any hospital or other medical institution, shall be made by the Assessing Officer, without giving effect to the provisions of section 10, unless—

(i) the Assessing Officer has intimated the Central Government or the prescribed authority the contravention of the provisions of clause (21) or clause (22B) or clause (23A) or clause (23B) or sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) of section 10, as the case may be, by such scientific research association, news agency, association or institution or fund or trust or university or other educational institution or any hospital or other medical institution, where in his view such contravention has taken place; and

(ii) the approval granted to such scientific research association or other association or institution or university or other educational institution or hospital or other medical institution has been withdrawn or notification issued in respect of such news agency or fund or trust or institution has been rescinded.”

61. In section 153 of the Income-tax Act, in sub-section (3), in *Explanation 1*, after clause (ii), the following clause shall be inserted with effect from the 1st day of April, 2003, namely:—

Amendment of section 153.

“(iia) the period commencing from the date on which the Assessing Officer intimates the Central Government or the prescribed authority, the contravention of the provisions of clause (21) or clause (22B) or clause (23A) or clause (23B) or sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) of section 10, under clause (i) of the proviso to sub-section (3) of section 143 and ending with the date on which the copy of the order withdrawing the approval or rescinding the notification, as the case may be, under those clauses is received by the Assessing Officer;”

62. In section 155 of the Income-tax Act, after sub-section (13) and before the *Explanation*, the following sub-sections shall be inserted with effect from the 1st day of June, 2002, namely:—

Amendment of section 155.

“(14) Where in the assessment for any previous year or in any intimation or deemed intimation under sub-section (1) of section 143 for any previous year, credit for tax deducted in accordance with the provisions of section 199 has not been given on

the ground that the certificate furnished under section 203 was not filed with the return and subsequently such certificate is produced before the Assessing Officer within two years from the end of the assessment year in which such income is assessable, the Assessing Officer shall amend the order of assessment or any intimation or deemed intimation under sub-section (1) of section 143, as the case may be, and the provisions of section 154 shall, so far as may be, apply thereto:

Provided that nothing contained in this sub-section shall apply unless the income from which the tax has been deducted has been disclosed in the return of income filed by the assessee for the relevant assessment year.

(15) Where in the assessment for any year, a capital gain arising from the transfer of a capital asset, being land or building or both, is computed by taking the full value of the consideration received or accruing as a result of the transfer to be the value adopted or assessed by any authority of a State Government for the purpose of payment of stamp duty in accordance with sub-section (1) of section 50C, and subsequently such value is revised in any appeal or revision or reference referred to in clause (b) of sub-section (2) of that section, the Assessing Officer shall amend the order of assessment so as to compute the capital gain by taking the full value of the consideration to be the value as so revised in such appeal or revision or reference; and the provisions of section 154 shall, so far as may be, apply thereto, and the period of four years shall be reckoned from the end of the previous year in which the order revising the value was passed in that appeal or revision or reference.

Amendment of
section 158A.

63. In section 158A of the Income-tax Act, with effect from the 1st day of June, 2002,—

(a) in sub-section (1),—

(i) for the words and figures “before the Supreme Court on a reference under section 257 or in appeal under section 261”, the words, figures and letter “before the Supreme Court on a reference under section 257 or in appeal under section 260A before the High Court or in appeal under section 261 before the Supreme Court” shall be substituted;

(ii) for the words and figures “for a reference before the High Court under section 256 or the Supreme Court under section 257 or in appeal before the Supreme Court under section 261”, the words, figures and letter “in appeal before the High Court under section 260A or in appeal before the Supreme Court under section 261” shall be substituted;

(b) in sub-section (4), in clause (b), for the words and figures “for a reference before the High Court under section 256 or the Supreme Court under section 257 or in appeal before the Supreme Court under section 261”, the words, figures and letter “in appeal before the High Court under section 260A or the Supreme Court under section 261” shall be substituted.

Amendment of
section 158B.

64. In section 158B of the Income-tax Act, in clause (b), after the words “for the purposes of this Act”, the words “, or any expense, deduction or allowance claimed under this Act which is found to be false” shall be inserted and shall be deemed to have been inserted with effect from the 1st day of July, 1995.

Amendment of
section 158BB.

65. In section 158BB of the Income-tax Act, in sub-section (1), with effect from the 1st day of July, 1995,—

(i) for the portion beginning with the words and figure “in accordance with the provisions of Chapter IV,” and ending with the words “as are available with the Assessing Officer”, the words “in accordance with the provisions of this Act, on the basis of evidence found as a result of search or requisition of books of account or other documents and such other materials or information as are available with the Assessing Officer and relatable to such evidence” shall be substituted and shall be deemed to have been substituted;

(ii) in clause (a), for the words "have been concluded", the words "have been concluded prior to the date of commencement of the search or the date of requisition" shall be substituted and shall be deemed to have been substituted;

(iii) in clause (b), for the words and figures "or section 147", the words, brackets and figures "or in response to a notice issued under sub-section (1) of section 142 or section 148" shall be substituted and shall be deemed to have been substituted;

(iv) for clause (c), the following clauses shall be substituted and shall be deemed to have been substituted, namely:—

"(c) where the due date for filing a return of income has expired, but no return of income has been filed,—

(A) on the basis of entries as recorded in the books of account and other documents maintained in the normal course on or before the date of the search or requisition where such entries result in computation of loss for any previous year falling in the block period; or

(B) on the basis of entries as recorded in the books of account and other documents maintained in the normal course on or before the date of the search or requisition where such income does not exceed the maximum amount not chargeable to tax for any previous year falling in the block period;

(ca) where the due date for filing a return of income has expired, but no return of income has been filed, as *nil*, in cases not falling under clause (c);";

(v) in the *Explanation*, in clause (a),—

(i) for the word and figures "Chapter IV", the words "this Act" shall be substituted and shall be deemed to have been substituted;

(ii) the following proviso shall be inserted and shall be deemed to have been inserted, namely:—

"Provided that in computing deductions under Chapter VIA for the purposes of the said aggregation, effect shall be given to set off of brought forward losses under Chapter VI or unabsorbed depreciation under sub-section (2) of section 32;"

66. In section 158BC of the Income-tax Act,—

(a) in clause (b), for the words and figures "and section 144", the words and figures "section 144 and section 145" shall be substituted and shall be deemed to have been substituted with effect from the 1st day of July, 1995;

(b) for clause (d), the following clause shall be substituted with effect from the 1st day of June, 2002, namely:—

"(d) the assets seized under section 132 or requisitioned under section 132A shall be dealt with in accordance with the provisions of section 132B."

67. In section 158BD of the Income-tax Act, after the words "that Assessing Officer shall proceed", the words, figures and letters "under section 158BC" shall be inserted with effect from the 1st day of June, 2002.

68. In section 158BE of the Income-tax Act, for *Explanation 1*, the following shall be substituted with effect from the 1st day of June, 2002, namely:—

"*Explanation 1*.—In computing the period of limitation for the purposes of this section,—

(i) the period during which the assessment proceeding is stayed by an order or injunction of any court; or

(ii) the period commencing from the day on which the Assessing Officer directs the assessee to get his accounts audited under sub-section (2A) of section 142 and ending on the day on which the assessee is required to furnish a report of such audit under that sub-section; or

Amendment
of section
158BC.

Amendment
of section
158BD.

Amendment
of section
158BE.

(iii) the time taken in reopening the whole or any part of the proceeding or giving an opportunity to the assessee to be re-heard under the proviso to section 129; or

(iv) in a case where an application made before the Settlement Commission under section 245C is rejected by it or is not allowed to be proceeded with by it, the period commencing on the date on which such application is made and ending with the date on which the order under sub-section (1) of section 245D is received by the Commissioner under sub-section (2) of that section,

shall be excluded:

Provided that where immediately after the exclusion of the aforesaid period, the period of limitation referred to in sub-section (1) or sub-section (2) available to the Assessing Officer for making an order under clause (c) of section 158BC is less than sixty days, such remaining period shall be extended to sixty days and the aforesaid period of limitation shall be deemed to be extended accordingly.”.

Insertion of
new section
174A.

69. In Chapter XV of the Income-tax Act, after section 174 and before the sub-heading “K.—Persons trying to alienate their assets”, the following sub-heading and section shall be inserted, namely:—

“JA.—Association of persons or body of individuals or artificial juridical person formed for a particular event or purpose

Assessment of
association of
persons or
body of
individuals or
artificial
juridical person
formed for a
particular
event or
purpose.

174A. Notwithstanding anything contained in section 4, where it appears to the Assessing Officer that any association of persons or a body of individuals or an artificial juridical person, formed or established or incorporated for a particular event or purpose is likely to be dissolved in the assessment year in which such association of persons or a body of individuals or an artificial juridical person was formed or established or incorporated or immediately after such assessment year, the total income of such association or body or juridical person for the period from the expiry of the previous year for that assessment year up to the date of its dissolution shall be chargeable to tax in that assessment year, and the provisions of sub-sections (2) to (6) of section 174 shall, so far as may be, apply to any proceedings in the case of any such person as they apply in the case of persons leaving India.”.

Amendment
of section
190.

70. In section 190 of the Income-tax Act, after the words “by advance payment”, the words, brackets, figures and letter “or by payment under sub-section (1A) of section 192” shall be inserted with effect from the 1st day of June, 2002.

Amendment
of section
192.

71. In section 192 of the Income-tax Act, with effect from the 1st day of June, 2002,—

(a) after sub-section (1), the following sub-sections shall be inserted, namely:—

“(1A) Without prejudice to the provisions contained in sub-section (1), the person responsible for paying any income in the nature of a perquisite which is not provided for by way of monetary payment, referred to in clause (2) of section 17, may pay, at his option, tax on the whole or part of such income without making any deduction therefrom at the time when such tax was otherwise deductible under the provisions of sub-section (1).

(1B) For the purpose of paying tax under sub-section (1A), tax shall be determined at the average of income-tax computed on the basis of the rates in force for the financial year, on the income chargeable under the head "Salaries" including the income referred to in sub-section (1A), and the tax so payable shall be construed as if it were, a tax deductible at source, from the income under the head "Salaries" as per the provisions of sub-section (1), and shall be subject to the provisions of this Chapter.;

(b) in sub-section (3), after the word, brackets and figure "sub-section (1)", the words, brackets, figure and letter "or sub-section (1A)" shall be inserted.

72. In section 193 of the Income-tax Act, in the proviso, after clause (v) and before the *Explanation*, the following clauses shall be inserted with effect from the 1st day of June, 2002, namely:—

Amendment
of section
193.

31 of 1956.

"(vi) any interest payable to the Life Insurance Corporation of India established under the Life Insurance Corporation Act, 1956, in respect of any securities owned by it or in which it has full beneficial interest; or

57 of 1972.

(vii) any interest payable to the General Insurance Corporation of India (hereafter in this clause referred to as the Corporation) or to any of the four companies (hereafter in this clause referred to as such company), formed by virtue of the schemes framed under sub-section (1) of section 16 of the General Insurance Business (Nationalisation) Act, 1972, in respect of any securities owned by the Corporation or such company or in which the Corporation or such company has full beneficial interest; or

(viii) any interest payable to any other insurer in respect of any securities owned by it or in which it has full beneficial interest."

73. In section 194 of the Income-tax Act, for the first and second provisos, the following provisos shall be substituted with effect from the 1st day of June, 2002, namely:—

Amendment
of section
194.

"Provided that no such deduction shall be made in the case of a shareholder, being an individual, if—

(a) the dividend is paid by the company by an account payee cheque; and

(b) the amount of such dividend or, as the case may be, the aggregate of the amounts of such dividend distributed or paid or likely to be distributed or paid during the financial year by the company to the shareholder, does not exceed one thousand rupees:

Provided further that the provisions of this section shall not apply to such income credited or paid to—

31 of 1956.

(a) the Life Insurance Corporation of India established under the Life Insurance Corporation Act, 1956, in respect of any shares owned by it or in which it has full beneficial interest;

57 of 1972.

(b) the General Insurance Corporation of India (hereafter in this proviso referred to as the Corporation) or to any of the four companies (hereafter in this proviso referred to as such company), formed by virtue of the schemes framed under sub-section (1) of section 16 of the General Insurance Business (Nationalisation) Act, 1972, in respect of any shares owned by the Corporation or such company or in which the Corporation or such company has full beneficial interest;

(c) any other insurer in respect of any shares owned by it or in which it has full beneficial interest."

74. In section 194A of the Income-tax Act, after sub-section (1) and before the *Explanation*, the following proviso shall be inserted with effect from the 1st day of June, 2002, namely:—

Amendment
of section
194A.

"Provided that an individual or a Hindu undivided family, whose total sales, gross receipts or turnover from the business or profession carried on by him exceed

the monetary limits specified under clause (a) or clause (b) of section 44AB during the financial year immediately preceding the financial year in which such interest is credited or paid, shall be liable to deduct income-tax under this section.”.

Amendment
of section
194C.

75. In section 194C of the Income-tax Act, after sub-section (2) and before *Explanation 1*, the following proviso shall be inserted with effect from the 1st day of June, 2002, namely:—

“Provided that an individual or a Hindu undivided family, whose total sales, gross receipts or turnover from the business or profession carried on by him exceed the monetary limits specified under clause (a) or clause (b) of section 44AB during the financial year immediately preceding the financial year in which such sum is credited or paid to the account of the sub-contractor, shall be liable to deduct income-tax under this sub-section.”.

Amendment of
section 194H.

76. In section 194H of the Income-tax Act, with effect from the 1st day of June, 2002,—

(a) for the words “ten per cent.”, the words “five per cent.” shall be substituted;

(b) after the proviso and before the *Explanation*, the following proviso shall be inserted, namely:—

“Provided further that an individual or a Hindu undivided family, whose total sales, gross receipts or turnover from the business or profession carried on by him exceed the monetary limits specified under clause (a) or clause (b) of section 44AB during the financial year immediately preceding the financial year in which such commission or brokerage is credited or paid, shall be liable to deduct income-tax under this section.”.

Amendment
of section
194-I.

77. In section 194-I of the Income-tax Act, after the proviso and before the *Explanation*, the following proviso shall be inserted with effect from the 1st day of June, 2002, namely:—

“Provided further that an individual or a Hindu undivided family, whose total sales, gross receipts or turnover from the business or profession carried on by him exceed the monetary limits specified under clause (a) or clause (b) of section 44AB during the financial year immediately preceding the financial year in which such income by way of rent is credited or paid, shall be liable to deduct income-tax under this section.”.

Amendment of
section 194J.

78. In section 194J of the Income-tax Act, in sub-section (1), after the proviso, the following proviso shall be inserted with effect from the 1st day of June, 2002, namely:—

“Provided further that an individual or a Hindu undivided family, whose total sales, gross receipts or turnover from the business or profession carried on by him exceed the monetary limits specified under clause (a) or clause (b) of section 44AB during the financial year immediately preceding the financial year in which such sum by way of fees for professional services or technical services is credited or paid, shall be liable to deduct income-tax under this section.”.

Substitution of
new section for
section 194K.
Income in
respect of
units.

79. For section 194K of the Income-tax Act, the following section shall be substituted with effect from the 1st day of June, 2002, namely:—

‘194K. Where any income is payable to a resident in respect of units of a Mutual Fund specified under clause (23D) of section 10 or of the Unit Trust of India, the person responsible for making the payment shall, at the time of credit of such income to the account of payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rate of ten per cent.:

Provided that the provisions of this section shall not apply where the amount of such income or, as the case may be, the aggregate of the amounts of such income credited or paid or likely to be credited or paid during the financial year by the person responsible for making the payment to the account of, or to, the payee does not exceed one thousand rupees:

Provided further that the amount of one thousand rupees shall be computed with reference to the income credited or paid—

(a) in respect of a branch office of the Mutual Fund or of the Unit Trust of India, as the case may be, and

(b) under a particular scheme under which the units have been issued.

Explanation.—For the purposes of this section,—

(a) “Unit Trust of India” means the Unit Trust of India established under the Unit Trust of India Act, 1963;

(b) where any income as aforesaid is credited to any account, whether called “Suspense account” or by any other name, in the books of account of the person liable to pay such income, such crediting shall be deemed to be credit of such income to the account of the payee and the provisions of this section shall apply accordingly.

52 of 1963.

80. In section 195 of the Income-tax Act, in sub-section (1), the second proviso shall be omitted with effect from the 1st day of June, 2002.

Amendment of section 195.

81. In section 195A of the Income-tax Act, for the words “Where, under an agreement”, the words, brackets, figures and letter “In a case other than that referred to in sub-section (1A) of section 192, where under an agreement” shall be substituted with effect from the 1st day of June, 2002.

Amendment of section 195A.

82. In section 196A of the Income-tax Act, in sub-section (1), the proviso shall be omitted with effect from the 1st day of June, 2002.

Amendment of section 196A.

83. In section 196C of the Income-tax Act, the proviso shall be omitted with effect from the 1st day of June, 2002.

Amendment of section 196C.

84. In section 196D of the Income-tax Act, in sub-section (1), the proviso shall be omitted with effect from the 1st day of June, 2002.

Amendment of section 196D.

85. In section 197A of the Income-tax Act, after sub-section (1A), the following sub-section shall be inserted with effect from the 1st day of June, 2002, namely:—

Amendment of section 197A.

“(1B) The provisions of this section shall not apply where the amount of any income of the nature referred to in sub-section (1) or sub-section (1A), as the case may be, or the aggregate of the amounts of such incomes credited or paid or likely to be credited or paid during the previous year in which such income is to be included exceeds the maximum amount which is not chargeable to income-tax.”

86. In section 198 of the Income-tax Act, the following proviso shall be inserted with effect from the 1st day of June, 2002, namely:—

Amendment of section 198.

“Provided that the sum being the tax paid, under sub-section (1A) of section 192 for the purpose of computing the income of an assessee, shall not be deemed to be income received.”

87. Section 199 of the Income-tax Act shall be re-numbered as sub-section (1) thereof, and after sub-section (1) as so re-numbered, the following sub-section shall be inserted with effect from the 1st day of June, 2002, namely:—

Amendment of section 199.

“(2) Any sum referred to in sub-section (1A) of section 192 and paid to the Central Government shall be treated as the tax paid on behalf of the person in respect of whose income, such payment of tax has been made and credit shall be given to him for the amount so paid on production of the certificate furnished under section 203 in the assessment under this Act for the assessment year for which such income is assessable.”

88. Section 200 of the Income-tax Act shall be re-numbered as sub-section (1) thereof, and after sub-section (1) as so re-numbered, the following sub-section shall be inserted with effect from the 1st day of June, 2002, namely:—

Amendment of section 200.

“(2) Any person being an employer, referred to in sub-section (1A) of section 192 shall pay, within the prescribed time, the tax to the credit of the Central Government or as the Board directs.”.

Amendment
of section 201.

89. In section 201 of the Income-tax Act, in sub-section (1), after the words “If any such person”, the words and figures “referred to in section 200” shall be inserted with effect from the 1st day of June, 2002.

Amendment
of section
203.

90. Section 203 of the Income-tax Act shall be re-numbered as sub-section (1) thereof, and after sub-section (1) as so re-numbered, the following sub-section shall be inserted with effect from the 1st day of June, 2002, namely:—

“(2) Every person, being an employer, referred to in sub-section (1A) of section 192 shall, within such period, as may be prescribed, furnish to the person in respect of whose income such payment of tax has been made, a certificate to the effect that tax has been paid to the Central Government, and specify the amount so paid, the rate at which the tax has been paid and such other particulars as may be prescribed.”.

Insertion of
new section
206CA.

91. After section 206C of the Income-tax Act, the following section shall be inserted with effect from the 1st day of June, 2002, namely:—

Tax-
collection
account
number.

“206CA. (1) Every person collecting tax in accordance with the provisions of section 206C, shall, within such time as may be prescribed, apply to the Assessing Officer for the allotment of a tax-collection account number.

(2) Where a tax-collection account number has been allotted to a person, such person shall quote such number—

(a) in all challans for the payment of any sum in accordance with the provisions of sub-section (3) of section 206C;

(b) in all certificates furnished under sub-section (5) of section 206C;

(c) in all the returns delivered in accordance with the provisions of sub-section (5A) or sub-section (5B) of section 206C to any income-tax authority; and

(d) in all other documents pertaining to such transactions as may be prescribed in the interest of revenue.”.

Amendment
of section
210.

92. In section 210 of the Income-tax Act, in sub-section (3), the words, brackets and figure “and who has not paid any advance tax under sub-section (1)” shall be omitted with effect from the 1st day of June, 2002.

Amendment
of section
244A.

93. In section 244A of the Income-tax Act, in sub-section (1), in clauses (a) and (b), for the words “three-fourth per cent.”, the words “two-third per cent.” shall be substituted with effect from the 1st day of June, 2002.

Amendment
of section
245C.

94. In section 245C of the Income-tax Act, sub-section (1E) shall be omitted with effect from the 1st day of June, 2002.

Amendment
of section
245D.

95. In section 245D of the Income-tax Act, with effect from the 1st day of June, 2002,—

(a) in sub-section (1), for the words “the Settlement Commission may, by order, allow the application to be proceeded with or reject the application”, the words, figures and letter “the Settlement Commission, shall, where it is possible, by order, reject the application or allow the application to be proceeded with within a period of one year from the end of the month in which such application was made under section 245C” shall be substituted;

(b) after sub-section (4), the following sub-section shall be inserted, namely:—

“(4A) In every application allowed to be proceeded with under sub-section (1), the Settlement Commission shall, where it is possible, pass an order under sub-section (4) within a period of four years from the end of the financial year in which such application was allowed to be proceeded with.”.

96. Section 245HA of the Income-tax Act shall be omitted with effect from the 1st day of June, 2002. Omission of section 245HA.

97. In section 252 of the Income-tax Act, for sub-section (3), the following sub-section shall be substituted, namely:— Amendment of section 252.

“(3) The Central Government shall appoint the Senior Vice-President or one of the Vice-Presidents of the Appellate Tribunal to be the President thereof.”

98. In section 253 of the Income-tax Act, in sub-section (1), in clause (c), after the words, figures and letters “under section 12AA or under section 263”, the words and figures “or under section 271” shall be inserted with effect from the 1st day of June, 2002. Amendment of section 253.

99. For section 269T of the Income-tax Act, the following section shall be substituted with effect from the 1st day of June, 2002, namely:— Substitution of new section for section 269T.

‘269T. No branch of a banking company or a co-operative bank and no other company or co-operative society and no firm or other person shall repay any loan or deposit made with it otherwise than by an account payee cheque or account payee bank draft drawn in the name of the person who has made the loan or deposit if— Mode of repayment of certain loans or deposits.

(a) the amount of the loan or deposit together with the interest, if any, payable thereon, or

(b) the aggregate amount of the loans or deposits held by such person with the branch of the banking company or co-operative bank or, as the case may be, the other company or co-operative society or the firm, or other person either in his own name or jointly with any other person on the date of such repayment together with the interest, if any, payable on such loans or deposits, is twenty thousand rupees or more:

Provided that where the repayment is by a branch of a banking company or co-operative bank, such repayment may also be made by crediting the amount of such loan or deposit to the savings bank account or the current account (if any) with such branch of the person to whom such loan or deposit has to be repaid.

Explanation.—For the purposes of this section,—

(i) “banking company” shall have the meaning assigned to it in clause (i) of the *Explanation* to section 269SS;

(ii) “co-operative bank” shall have the meaning assigned to it in Part V of the Banking Regulation Act, 1949;

(iii) “loan or deposit” means any loan or deposit of money which is repayable after notice or repayable after a period and, in the case of a person other than a company, includes loan or deposit of any nature.’

100. After section 269UO of the Income-tax Act, the following section shall be inserted with effect from the 1st day of July, 2002, namely:— Insertion of new section 269UP.

“269UP. The provisions of this Chapter shall not apply to, or in relation to, the transfer of any immovable property effected on or after the 1st day of July, 2002.” Chapter not to apply where transfer of immovable property effected after certain date.

101. In section 271 of the Income-tax Act, in sub-section (1),— Amendment of section 271.

(a) in the opening portion, after the words and brackets “Commissioner (Appeals)”, the words “or the Commissioner” shall be inserted with effect from the 1st day of June, 2002;

(b) in clause (ii), for the words “in addition to any tax payable”, the words “in addition to tax, if any, payable” shall be substituted with effect from the 1st day of April, 2003;

(c) in clause (iii), for the words "in addition to any tax payable", the words "in addition to tax, if any, payable" shall be substituted with effect from the 1st day of April, 2003;

(d) in *Explanation 1*, in clause (A), after the words and brackets "Commissioner (Appeals)", the words "or the Commissioner" shall be inserted with effect from the 1st day of June, 2002;

(e) in *Explanation 3*, the words "who has not previously been assessed under this Act," shall be omitted with effect from the 1st day of April, 2003;

(f) in *Explanation 4*, for clause (a), the following clause shall be substituted with effect from the 1st day of April, 2003, namely:—

"(a) in any case where the amount of income in respect of which particulars have been concealed or inaccurate particulars have been furnished has the effect of reducing the loss declared in the return or converting that loss into income, means the tax that would have been chargeable on the income in respect of which particulars have been concealed or inaccurate particulars have been furnished had such income been the total income;"

(g) in *Explanation 7*, after the words and brackets "Commissioner (Appeals)", the words "or the Commissioner" shall be inserted with effect from the 1st day of June, 2002.

Substitution of new section for section 271F.

Penalty for failure to furnish return of income.

Amendment of section 272A.

102. For section 271F of the Income-tax Act, the following section shall be substituted with effect from the 1st day of June, 2002, namely:—

"271F. If a person who is required to furnish a return of his income, as required under sub-section (1) of section 139 or by the provisos to that sub-section, fails to furnish such return before the end of the relevant assessment year, the Assessing Officer may direct that such person shall pay, by way of penalty, a sum of five thousand rupees."

103. In section 272A of the Income-tax Act,—

(a) in sub-section (1), clause (d) shall be omitted with effect from the 1st day of June, 2002;

(b) in sub-section (2), for clause (e), the following clause shall be substituted with effect from the 1st day of April, 2003, namely:—

"(e) to furnish the return of income which he is required to furnish under sub-section (4A) or sub-section (4C) of section 139 or to furnish it within the time allowed and in the manner required under those sub-sections; or".

Insertion of new section 272B.

Penalty for failure to comply with the provisions of section 139A.

104. After section 272AA of the Income-tax Act, the following section shall be inserted with effect from the 1st day of June, 2002, namely:—

"272B. (1) If a person fails to comply with the provisions of section 139A, the Assessing Officer may direct that such person shall pay, by way of penalty, a sum of ten thousand rupees.

(2) If a person who is required to quote his permanent account number in any document referred to in clause (c) of sub-section (5) of section 139A, or to intimate such number as required by sub-section (5A) of that section, quotes or intimates a number which is false, and which he either knows or believes to be false or does not believe to be true, the Assessing Officer may direct that such person shall pay, by way of penalty, a sum of ten thousand rupees.

(3) No order under sub-section (1) or sub-section (2) shall be passed unless the person, on whom the penalty is proposed to be imposed, is given an opportunity of being heard in the matter."

105. After section 272BB of the Income-tax Act, the following section shall be inserted with effect from the 1st day of June, 2002, namely:—

Insertion of new section 272BBB.
Penalty for failure to comply with the provisions of section 206CA.

“272BBB. (1) If a person fails to comply with the provisions of section 206CA, he shall, on an order passed by the Assessing Officer, pay, by way of penalty, a sum of ten thousand rupees.

(2) No order under sub-section (1) shall be passed unless the person on whom the penalty is proposed to be imposed, is given an opportunity of being heard in the matter.”

106. In section 273B of the Income-tax Act, with effect from the 1st day of June, 2002,—

Amendment of section 273B.

(a) after the words, brackets, figures and letters “sub-section (1) of section 272AA or”, the words, figures and letter “section 272B or” shall be inserted;

(b) for the words, figures and letters “section 272BB or”, the words, figures, letters and brackets “section 272BB or sub-section (1) of section 272BBB or” shall be substituted with effect from the 1st day of June, 2002.

107. After section 275A of the Income-tax Act, the following section shall be inserted with effect from the 1st day of June, 2002, namely:—

Insertion of new section 275B.
Failure to comply with the provisions of clause (iib) of sub-section (1) of section 132.

“275B. If a person who is required to afford the authorised officer the necessary facility to inspect the books of account or other documents, as required under clause (iib) of sub-section (1) of section 132, fails to afford such facility to the authorised officer, he shall be punishable with rigorous imprisonment for a term which may extend to two years and shall also be liable to fine.”

108. In section 279 of the Income-tax Act, in sub-section (1), after the word, figures and letter “section 275A,” the word, figures and letter “section 275B,” shall be inserted with effect from the 1st day of June, 2002.

Amendment of section 279.

109. In the Second Schedule to the Income-tax Act, in rule 68A, in sub-rule (3), for the words “nine per cent.”, the words “eight per cent.” shall be substituted with effect from the 1st day of June, 2002.

Amendment of Second Schedule.

Wealth-tax

27 of 1957.

110. In section 18 of the Wealth-tax Act, 1957 (hereinafter referred to as the Wealth-tax Act), in sub-section (1),—

Amendment of section 18.

(a) in *Explanation 2*, in clause (A), after the words and brackets “Commissioner (Appeals)”, the words “or the Commissioner” shall be inserted with effect from the 1st day of June, 2002;

(b) in *Explanation 3*, the words “who has not previously been assessed under this Act,” shall be omitted with effect from the 1st day of April, 2003.

111. In section 18C of the Wealth-tax Act, with effect from the 1st day of June, 2002,—

Amendment of section 18C.

(a) in sub-section (1),—

(i) after the words and figures “before the High Court or the Supreme Court on a reference under section 27”, the words, figures and letter “or in appeal under section 27A before the High Court” shall be inserted;

(ii) for the words and figures “for a reference before the High Court or the Supreme Court under section 27 or in appeal before the Supreme Court under section 29”, the words, figures and letter “in appeal before the High Court under section 27A or the Supreme Court under section 29” shall be substituted;

(b) in sub-section (4), in clause (b), for the words and figures “for a reference before the High Court or the Supreme Court under section 27 or in appeal before the Supreme Court under section 29”, the words, figures and letter “in appeal before the High Court under section 27A or the Supreme Court under section 29” shall be substituted.

Amendment of
section 22D.

112. In section 22D of the Wealth-tax Act, with effect from the 1st day of June, 2002,—

(a) in sub-section (1), for the words “the Settlement Commission may, by order, allow the application to be proceeded with or reject the application”, the words, figures and letter “the Settlement Commission shall, where it is possible, by order, reject the application or allow the application to be proceeded with within a period of one year from the end of the month in which such application was made under section 22C” shall be substituted;

(b) after sub-section (4), the following sub-section shall be inserted, namely:—

“(4A) In every application, allowed to be proceeded with under sub-section (1), the Settlement Commission shall, where it is possible, pass an order under sub-section (4) within a period of four years from the end of the financial year in which such application was allowed to be proceeded with.”.

Omission of
section 22HA.

113. Section 22HA of the Wealth-tax Act shall be omitted with effect from the 1st day of June, 2002.

Amendment of
section 34A.

114. In section 34A of the Wealth-tax Act, with effect from the 1st day of June, 2002,—

(a) in sub-section (3), for the words “nine per cent.”, the words “eight per cent.” shall be substituted;

(b) in sub-section (4B), in clause (a), for the words “three-fourth per cent.”, the words “two-third per cent.” shall be substituted.

Expenditure-tax

Amendment of
section 3.

115. In the Expenditure-tax Act, 1987 (hereinafter referred to as the Expenditure-tax Act), in section 3, in clause (1), for the words “two thousand rupees or more per day per individual”, the words “three thousand rupees or more per day” shall be substituted with effect from the 1st day of June, 2002. 35 of 1987.

Amendment of
section 5.

116. In the Expenditure-tax Act, in section 5, in clause (1), sub-clauses (b) and (d) shall be omitted with effect from the 1st day of June, 2002.

CHAPTER IV

INDIRECT TAXES

Customs

Amendment
of section 4.

117. In section 4 of the Customs Act, 1962 (hereinafter referred to as the Customs Act),— 52 of 1962.

(i) in sub-section (1), for the words “Central Government”, the word “Board” shall be substituted;

(ii) in sub-section (2), for the words “Central Government may authorise the Board,”, the words “Board may authorise a Chief Commissioner of Customs or” shall be substituted.

Amendment
of section 14.

118. In section 14 of the Customs Act,—

(i) in sub-section (1), for the portion beginning with the words “international trade” and ending with the words “offer for sale”, the following shall be substituted, namely:—

“international trade, where—

(a) the seller and the buyer have no interest in the business of each other; or

(b) one of them has no interest in the business of the other, and the price is the sole consideration for the sale or offer for sale”;

(ii) in sub-section (2), for the words "Central Government", the word "Board" shall be substituted;

(iii) in sub-section (3),—

(a) in clause (a), for the words "Central Government", wherever they occur, the word "Board" shall be substituted;

(b) for clause (b), the following clause shall be substituted, namely:—

'(b) "foreign currency" and "Indian currency" have the meanings respectively assigned to them in clause (m) and clause (g) of section 2 of the Foreign Exchange Management Act, 1999;'

42 of 1999.

119. In section 25 of the Customs Act,—

Amendment
of section 25.

(a) after sub-section (2), the following sub-section shall be inserted, namely:—

"(2A) The Central Government may, if it considers it necessary or expedient so to do for the purpose of clarifying the scope or applicability of any notification issued under sub-section (1) or order issued under sub-section (2), insert an explanation in such notification or order, as the case may be, by notification in the Official Gazette, at any time within one year of issue of the notification under sub-section (1) or order under sub-section (2), and every such explanation shall have effect as if it had always been the part of the first such notification or order, as the case may be.";

(b) in sub-section (4), after the word, brackets and figure "sub-section (1)", the words, brackets, figure and letter "or sub-section (2A)" shall be inserted.

120. In section 28AA of the Customs Act, in sub-section (1), for the words "eighteen per cent.", the words "ten per cent." shall be substituted.

Amendment of
section 28AA.

121. In section 28AB of the Customs Act, in sub-section (1), for the words "eighteen per cent.", the words "ten per cent." shall be substituted.

Amendment of
section 28AB.

122. In section 28-I of the Customs Act, in sub-section (2), in the first proviso, the words "except in the case of a resident applicant" shall be omitted.

Amendment of
section 28-I.

123. In section 47 of the Customs Act, in sub-section (2),—

Amendment
of section 47.

(i) for the words "two days", the words "five days" shall be substituted;

(ii) for the words "eighteen per cent.", the words "ten per cent." shall be substituted.

124. In section 61 of the Customs Act, in sub-section (1), in the first proviso, for clause (i), the following clause shall be substituted, namely:—

Amendment
of section 61.

"(i) in the case of any goods which are not likely to deteriorate, the period specified in clause (a) or clause (b) may, on sufficient cause being shown, be extended—

(A) in the case of such goods intended for use in any hundred per cent. export-oriented undertaking, by the Commissioner of Customs, for such period as he may deem fit; and

(B) in any other case, by the Commissioner of Customs, for a period not exceeding six months and by the Chief Commissioner of Customs for such further period as he may deem fit;"

125. In section 75 of the Customs Act, in sub-section (1), in the second proviso, for the words and figures "Foreign Exchange Regulation Act, 1973", the words and figures "Foreign Exchange Management Act, 1999" shall be substituted.

Amendment
of section 75.

46 of 1973.
42 of 1999.

126. After Chapter X of the Customs Act, the following Chapter shall, with effect from such date as may be appointed by the Central Government, by notification in the Official Gazette, be inserted, namely:—

Insertion of
new Chapter
XA.

"CHAPTER XA

SPECIAL PROVISIONS RELATING TO SPECIAL ECONOMIC ZONE

Notification
of special
economic
zone.

76A. The Central Government may, by notification in the Official Gazette, specify special economic zones comprising specifically delineated areas where any goods admitted shall be regarded, in so far as duties of customs are concerned, as being outside the customs territory of India as provided in this Chapter.

Application
of provisions.

76B. The provisions of this Chapter and other Chapters shall apply to goods admitted to a special economic zone, but in the event of conflict between the provisions of this Chapter and other Chapters, the provisions of this Chapter shall prevail.

Establishment
and control.

76C. (1) The Central Government may make rules specifying the requirements relating to goods or class of goods admissible to a special economic zone, the nature of operations to which such goods or class of goods may be subjected to, the conditions to be fulfilled and the procedures to be followed in this regard.

(2) The Board may specify, in the regulations made in this behalf, arrangements for customs control in a special economic zone.

(3) The proper officer shall have the right to carry out checks, at any time, on the goods kept or stored in a special economic zone.

Admission of
goods.

76D. Subject to such conditions as may be specified in the rules made in this behalf, any goods imported directly from outside India or procured from within India shall be authorised for admission to a special economic zone.

Exemption
from duties of
customs.

76E. Without prejudice to the provisions of sections 76F, 76G and 76H, any goods admitted to a special economic zone shall be exempt from duties of customs.

Levy of duties
of customs.

76F. Subject to the conditions as may be specified in the rules made in this behalf,—

(a) any goods admitted to a special economic zone from the domestic tariff area shall be chargeable to export duties at such rates as are leviable on such goods when exported;

(b) any goods removed from a special economic zone for home consumption shall be chargeable to duties of customs including anti-dumping, countervailing and safeguard duties under the Customs Tariff Act, 1975, where applicable, as leviable on such goods when imported; and

(c) the rate of duty and tariff valuation, if any, applicable to goods admitted to, or removed from, a special economic zone shall be the rate and tariff valuation in force as on the date of such admission or removal, as the case may be, and where such date is not ascertainable, on the date of payment of the duty.

Authorised
operations.

76G. All goods admitted to a special economic zone shall undergo such operations including processing or manufacturing as may be specified in the rules made in this behalf.

Goods utilised
within a
special
economic
zone.

76H. (1) The Central Government may make rules in this behalf to enumerate the cases in which goods to be utilised inside a special economic zone may be admitted free of duties of customs and lay down the requirements which shall be fulfilled.

(2) Goods utilised contrary to the provisions of rules made under sub-section (1) shall be chargeable to duties of customs in the same manner as provided under clause (b) of section 76F as if they have been removed for home consumption.

76-I. Any goods admitted to a special economic zone from the domestic tariff area for the purposes authorised under this Chapter shall be eligible for drawback under section 75 as if such goods are export goods for the purposes of that section. Drawback on goods admitted to a special economic zone.

76J. Any goods admitted to a special economic zone shall not be allowed to remain within such zone beyond such time as may be specified in the rules made in this behalf. Duration of stay.

76K. Any goods admitted free of duty to a special economic zone or goods under transshipment to and from such zone without payment of duty shall be subject to execution of such bond and such surety or security as may be specified in the rules made in this behalf. Security.

76L. Any goods admitted to, or produced or manufactured in, a special economic zone shall be allowed for transfer of ownership subject to such conditions as may be specified in the rules made in this behalf. Transfer of ownership.

76M. Any goods admitted to, or produced or manufactured in, a special economic zone may be removed in accordance with such procedure as may be specified in the rules made in this behalf. Removal of goods.

76N. In the event of closure of a special economic zone by the Central Government, by notification in the Official Gazette, the goods admitted to, or produced or manufactured in, such zone shall be removed within such time and in such manner as may be specified in the rules made in this behalf." Closure of a special economic zone.

127. In section 129B of the Customs Act,—

Amendment of section 129B.

(i) in sub-section (2), for the words "four years", the words "six months" shall be substituted;

(ii) after sub-section (2), the following sub-section shall be inserted, namely:—

"(2A) The Appellate Tribunal shall, where it is possible to do so, hear and decide every appeal within a period of three years from the date on which such appeal is filed:

Provided that where an order of stay is made in any proceeding relating to an appeal filed under sub-section (1) of section 129A, the Appellate Tribunal shall dispose of the appeal within a period of one hundred and eighty days from the date of such order:

Provided further that if such appeal is not disposed of within the period specified in the first proviso, the stay order shall, on the expiry of that period, stand vacated."

128. In section 129D of the Customs Act, for sub-section (3), the following sub-section shall be substituted, namely:—

Amendment of section 129D.

"(3) The Board or the Commissioner of Customs, as the case may be, shall, where it is possible to do so, make order under sub-section (1) or sub-section (2), within a period of six months, but not beyond a period of one year, from the date of the decision or order of the adjudicating authority."

Customs Tariff

Insertion of new
section 8C.

Power of
Central
Government to
impose
transitional
product specific
safeguard duty
on imports from
the People's
Republic of
China.

129. In the Customs Tariff Act, 1975 (hereinafter referred to as the Customs Tariff Act), after section 8B, the following section shall be inserted, namely:—

'8C. (1) Notwithstanding anything contained in section 8B, if the Central Government, after conducting such enquiry as it deems fit, is satisfied that any article is imported into India, from the People's Republic of China, in such increased quantities and under such conditions so as to cause or threatening to cause market disruption to domestic industry, then, it may, by notification in the Official Gazette, impose a safeguard duty on that article:

Provided that the Central Government may, by notification in the Official Gazette, exempt such quantity of any article as it may specify in the notification, when imported from the People's Republic of China into India, from payment of the whole or part of the safeguard duty leviable thereon.

(2) The Central Government may, pending the determination under sub-section (1), impose a provisional safeguard duty under this sub-section on the basis of a preliminary determination that increased imports have caused or threatened to cause market disruption to a domestic industry:

Provided that where, on final determination, the Central Government is of the opinion that increased imports have not caused or threatened to cause market disruption to a domestic industry, it shall refund the duty so collected:

Provided further that the provisional safeguard duty shall not remain in force for more than two hundred days from the date on which it was imposed.

(3) Notwithstanding anything contained in sub-sections (1) and (2), a notification issued under sub-section (1) or any safeguard duty imposed under sub-section (2), unless specifically made applicable in such notification or such imposition, as the case may be, shall not apply to articles imported by a hundred per cent. export-oriented undertaking or a unit in a free trade zone or in a special economic zone.

Explanation.—For the purposes of this section, the expressions "hundred per cent. export-oriented undertaking", "free trade zone" and "special economic zone" shall have the meanings respectively assigned to them in *Explanation 2* to sub-section (1) of section 3 of the Central Excise Act, 1944.

1 of 1944.

(4) The duty chargeable under this section shall be in addition to any other duty imposed under this Act or under any other law for the time being in force.

(5) The duty imposed under this section shall, unless revoked earlier, cease to have effect on the expiry of four years from the date of such imposition:

Provided that if the Central Government is of the opinion that such article continues to be imported into India, from the People's Republic of China, in such increased quantities so as to cause or threatening to cause market disruption to domestic industry and the safeguard duty should continue to be imposed, it may extend the period of such imposition for a period not beyond the period of ten years from the date on which the safeguard duty was first imposed.

(6) The Central Government may, by notification in the Official Gazette, make rules for the purposes of this section, and without prejudice to the generality of the foregoing, such rules may provide for the manner in which articles liable for safeguard duty may be identified and for the manner in which the causes of market disruption or causes of threat of market disruption in relation to such articles may be determined and for the assessment and collection of such safeguard duty.

(7) For the purposes of this section,—

(a) "domestic industry" means the producers—

(i) as a whole of a like article or a directly competitive article in India;
or

(ii) whose collective output of a like article or a directly competitive article in India constitutes a major share of the total production of the said article in India;

(b) "market disruption" shall be caused whenever imports of a like article or a directly competitive article produced by the domestic industry, increase rapidly, either absolutely or relatively, so as to be a significant cause of material injury, or threat of material injury, to the domestic industry;

(c) "threat of market disruption" means a clear and imminent danger of market disruption.

(8) Every notification issued under this section shall, as soon as may be after it is issued, be laid before each House of Parliament.

130. (1) Notwithstanding anything contained in section 25 of the Customs Act, barge mounted power plants, falling under heading 98.01 of the First Schedule to the Customs Tariff Act, shall be deemed to have been exempted from the whole of the additional duty of customs leviable thereon under sub-section (1) of section 3 of the Customs Tariff Act, within the period commencing from the 8th December, 2000 and ending with the 28th February, 2002 (both dates inclusive) and accordingly, notwithstanding anything contained in any judgment, decree or order of any court, tribunal or other authority, barge mounted power plants shall be deemed to be, and always to have been, exempted from the said additional duty of customs as if the exemption given by this sub-section had been in force at all material times.

Refund of additional duty of customs in certain cases.

(2) For the purposes of sub-section (1), the Central Government shall have and shall be deemed to have the power to exempt the goods referred to in the said sub-section with retrospective effect as if the Central Government had the power to exempt the said goods under sub-section (1) of section 25 of the Customs Act, retrospectively at all material times.

(3) Refund shall be made of all such additional duty of customs which have been collected but which would have not been so collected if the exemption referred to in sub-section (1) had been in force at all material times.

(4) Notwithstanding anything contained in section 27 of the Customs Act, an application for the claim of refund of the additional duty of customs under sub-section (3) shall be made within six months from the date on which the Finance Bill, 2002 receives the assent of the President.

131. In the Customs Tariff Act, the First Schedule shall be amended in the manner as specified in the Second Schedule.

Amendment of First Schedule.

Excise

1 of 1944.

132. In the Central Excise Act, 1944 (hereinafter referred to as the Central Excise Act), in section 2, in clause (f),—

Amendment of section 2,

(i) in sub-clause (ii), for the word "manufacture," the words "manufacture; or" shall be substituted;

(ii) after sub-clause (ii), the following sub-clause shall be inserted, namely:—

"(iii) which is specified in relation to any goods by the Central Government, by notification in the Official Gazette, as amounting to manufacture,".

133. In section 3 of the Central Excise Act, in sub-section (1),—

Amendment of section 3.

(i) in clauses (a) and (b), after the words "excisable goods" wherever they occur, the brackets and words "(excluding goods produced or manufactured in special economic zones)" shall, with effect from such date as may be appointed by the Central Government, by notification in the Official Gazette, be inserted;

(ii) in the proviso,—

(a) in clause (i), the words “or a special economic zone” shall, with effect from such date as may be appointed by the Central Government, by notification in the Official Gazette, be omitted;

(b) in *Explanation 2*, for clause (i), the following clause shall be substituted, namely:—

“(i) “free trade zone” means a zone which the Central Government may, by notification in the Official Gazette, specify in this behalf;”.

Amendment
of section 5A.

134. In section 5A of the Central Excise Act,—

(i) in sub-section (1), in the proviso,—

(a) in clause (i), the words “or a special economic zone”; and

(b) in the *Explanation*, the words “ , special economic zone”,

shall, with effect from such dates as may be appointed by the Central Government, by notification in the Official Gazette, be omitted;

(ii) after sub-section (2), the following sub-section shall be inserted, namely:—

“(2A) The Central Government may, if it considers it necessary or expedient so to do for the purpose of clarifying the scope or applicability of any notification issued under sub-section (1) or order issued under sub-section (2), insert an explanation in such notification or order, as the case may be, by notification in the Official Gazette at any time within one year of issue of the notification under sub-section (1) or order under sub-section (2), and every such explanation shall have effect as if it had always been the part of the first such notification or order, as the case may be.”;

(iii) in sub-section (5), after the word, brackets and figure “sub-section (1)”, the words, brackets, figure and letter “or sub-section (2A)” shall be inserted.

Amendment of
section 11AA.

135. In section 11AA of the Central Excise Act, in sub-section (1), for the words “eighteen per cent.”, the words “ten per cent.” shall be substituted.

Amendment of
section 11AB.

136. In section 11AB of the Central Excise Act, in sub-section (1), for the words “eighteen per cent.”, the words “ten per cent.” shall be substituted.

Omission of
sections 16 and
17.

137. Sections 16 and 17 of the Central Excise Act shall be omitted.

Amendment of
section 23D.

138. In section 23D of the Central Excise Act, in sub-section (2), in the first proviso, the words “except in the case of a resident applicant” shall be omitted.

Omission of
Chapter IV.

139. Chapter IV of the Central Excise Act shall be omitted.

Amendment of
section 35C.

140. In section 35C of the Central Excise Act,—

(i) in sub-section (2), for the words “four years”, the words “six months” shall be substituted;

(ii) after sub-section (2), the following sub-section shall be inserted, namely:—

“(2A) The Appellate Tribunal shall, where it is possible to do so, hear and decide every appeal within a period of three years from the date on which such appeal is filed:

Provided that where an order of stay is made in any proceeding relating to an appeal filed under sub-section (1) of section 35B, the Appellate Tribunal shall dispose of the appeal within a period of one hundred and eighty days from the date of such order:

Provided further that if such appeal is not disposed of within the period specified in the first proviso, the stay order shall, on the expiry of that period, stand vacated.”.

141. In section 35E of the Central Excise Act, for sub-section (3), the following sub-section shall be substituted, namely:—

Amendment of section 35E.

“(3) The Board or Commissioner of Central Excise, as the case may be, shall, where it is possible to do so, make order under sub-section (1) or sub-section (2), within a period of six months, but not beyond a period of one year, from the date of the decision or order of the adjudicating authority.”

142. (1) The notification of the Government of India in the Ministry of Finance (Department of Revenue) No. G.S.R. 509(E), dated the 8th July, 1999, issued under sub-section (1) of section 5A of the Central Excise Act by the Central Government shall stand amended and shall be deemed to have been amended in the manner as specified in the Third Schedule, on and from the 8th July, 1999 to the 28th February, 2002 (both dates inclusive) retrospectively and, accordingly, notwithstanding anything contained in any judgment, decree or order of any court, tribunal or other authority, any action taken or anything done or purported to have been taken or done under the said notification, shall be deemed to be and always to have been, for all purposes, as validly or effectively taken or done as if the notification as amended by this sub-section had been in force at all material times.

Amendment of notification issued under section 5A of the Central Excise Act.

(2) For the purposes of sub-section (1), the Central Government shall have and shall be deemed to have the power to amend the notification referred to in the said sub-section with retrospective effect as if the Central Government had the power to amend the said notification under sub-section (1) of section 5A of the Central Excise Act, retrospectively at all material times.

(3) Notwithstanding the cessation of the amendment under sub-section (1) on the 1st March, 2002, no suit or other proceedings shall be maintained or continued in any court, tribunal or other authority for any action taken or anything done or omitted to be done, in respect of any goods under the said notification, and no enforcement shall be made by any court, tribunal or other authority of any decree or order relating to such action taken or anything done or omitted to be done as if the amendment made by sub-section (1) had been in force at all material times.

(4) Notwithstanding the cessation of the amendment under sub-section (1) on the 1st March, 2002, recovery shall be made of all amounts of duty or interest or other charges which have not been collected or, as the case may be, which have been refunded but which would have been collected or, as the case may be, which would have not been refunded if the provisions of this section had been in force at all material times, within a period of thirty days from the date on which the Finance Bill, 2002 receives the assent of the President, and in the event of non-payment of duty or interest or other charges so recoverable, interest at the rate of fifteen per cent. per annum shall be payable, from the date immediately after the expiry of the said period of thirty days, till the date of payment.

Explanation.—For the removal of doubts, it is hereby declared that no act or omission on the part of any person shall be punishable as an offence which would not have been so punishable if the notification referred to in sub-section (1) had not been amended retrospectively by that sub-section.

143. The Central Excise Rules, 2002 made by the Central Government in exercise of the powers conferred by section 37 of the Central Excise Act and published *vide* notification of the Government of India in the Ministry of Finance (Department of Revenue) No. G.S.R. 143(E), dated the 1st March, 2002, shall stand amended and shall be deemed to have been amended in the manner as specified in column (2) of the Ninth Schedule, on and from the date specified in column (3) of that Schedule, retrospectively and, accordingly, notwithstanding anything contained in any judgment, decree or order of any court, tribunal or other authority, any action taken or anything done or purported to have been taken or done under the said rules, shall be deemed to be, and always to have been, for all purposes, as validly or effectively, taken or done as if the rules as amended by this section had been in force at all material times.

Amendment of Central Excise Rules, 2002 and validation of action taken thereunder.

Amendment of
Notification
issued under
Rule 57AK of
the Central
Excise Rules,
1944.

144. (1) The notification of the Government of India in the Ministry of Finance (Department of Revenue) No. G.S.R. 299(E), dated the 31st March, 2000, issued under rule 57AK of the Central Excise Rules, 1944, by the Central Government shall stand amended and shall be deemed to have been amended in the manner as specified in the Fourth Schedule, on and from the date mentioned in column (3) of that Schedule against that notification retrospectively and, accordingly, notwithstanding anything contained in any judgment, decree or order of any court, tribunal or other authority, any action taken or anything done or purported to have been taken or done under the said notification, shall be deemed to be, and always to have been, for all purposes, as validly or effectively taken or done as if the notification as amended by this sub-section had been in force at all material times.

(2) Credit shall be allowed of all such declared duty, which have been disallowed but which would not have been so disallowed if the amendment made in the notification referred to in sub-section (1) had been in force at all material times.

(3) Refund shall be made of all such credit of the declared duty, which have been collected but which would have not been so collected if the amendment made in the notification referred to in sub-section (1) had been in force at all material times.

(4) Notwithstanding anything contained in section 11B of the Central Excise Act, an application for the claim of refund of the credit of the declared duty under sub-section (3) shall be made within six months from the date on which the Finance Bill, 2002 receives the assent of the President.

Central Excise Tariff

Amendment
of Act
5 of 1986.

145. In the Central Excise Tariff Act, 1985 (hereinafter referred to as the Central Excise Tariff Act),—

(i) the First Schedule shall be amended in the manner as specified in the Fifth Schedule;

(ii) the Second Schedule shall be amended in the manner as specified in the Sixth Schedule.

Amendment
of Act
58 of 1957.

146. In the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (hereinafter referred to as the Additional Duties of Excise Act), the First Schedule shall be amended in the manner as specified in the Seventh Schedule.

Special
Additional
Excise Duty.

147. (1) In the case of goods specified in the Eighth Schedule, being goods manufactured, there shall be levied and collected, for purposes of the Union, by surcharge, a duty of excise, to be called the Special Additional Excise Duty, at the rates specified in the said Schedule.

(2) The Special Additional Excise Duty chargeable on goods specified in the Eighth Schedule shall be in addition to any other duties of excise chargeable on such goods under the Central Excise Act, or any other law for the time being in force.

(3) The provisions of the Central Excise Act, and the rules made thereunder, including those relating to refunds and exemptions from duties and imposition of penalty, shall, as far as may be, apply in relation to the levy and collection of the Special Additional Excise Duty leviable under this section in respect of the goods specified in the Eighth Schedule, as they apply in relation to the levy and collection of the duties of excise on such goods under that Act, or those rules, as the case may be.

CHAPTER V

SERVICE TAX

Amendment
of Act
1994.

148. (1) During the period commencing on and from the 16th day of July, 2001 and ending with such date as the Central Government may appoint under section 149, for the purposes of that section, the provisions of Chapter V of the Finance Act, 1994 shall be deemed to have had effect subject to the following modifications, namely:—

in section 65,—

(i) for clause (13), the following had been substituted, namely:—

“(13) “broadcasting” has the meaning assigned to it in clause (c) of section 2 of the Prasar Bharati (Broadcasting Corporation of India) Act, 1990 and also includes programme selection, scheduling or presentation of sound or visual matter on a radio or a television channel that is intended for public listening or viewing, as the case may be; and in the case of a broadcasting agency or organisation, having its head office situated in any place outside India, includes the activity of selling of time slots or obtaining sponsorships for broadcasting of any programme or collecting the broadcasting charges on behalf of the said agency or organisation, by its branch office or subsidiary or representative in India or any agent appointed in India or by any person who acts on its behalf in any manner;

25 of 1990.

(13A) “broadcasting agency or organisation” means any agency or organisation engaged in providing service in relation to broadcasting in any manner and, in the case of a broadcasting agency or organisation, having its head office situated in any place outside India, includes its branch office or subsidiary or representative in India or any agent appointed in India or any person who acts on its behalf in any manner, engaged in the activity of selling of time slots for broadcasting of any programme or obtaining sponsorships for programme or collecting broadcasting charges on behalf of the said agency or organisation;”;

(ii) in clause (72), for sub-clause (zk), the following sub-clause had been substituted, namely:—

“(zk) to a client, by a broadcasting agency or organisation in relation to broadcasting in any manner and, in the case of a broadcasting agency or organisation, having its head office situated in any place outside India, includes service provided by its branch office or subsidiary or representative in India or any agent appointed in India or by any person who acts on its behalf in any manner, engaged in the activity of selling of time slots for broadcasting of any programme or obtaining sponsorships for programme or collecting broadcasting charges on behalf of the said agency or organisation.

Explanation.—For the removal of doubts, it is hereby declared that so long as the radio or television programme broadcast is received in India and intended for listening or viewing, as the case may be, by the public, such service shall be a taxable service in relation to broadcasting, even if the encryption of the signals or beaming thereof through the satellite might have taken place outside India;”.

(2) Any action taken or anything done or omitted to be done or purported to have been taken or done or omitted to be done under this Chapter at any time during the period commencing on and from the 16th day of July, 2001 and ending with the day, on which the Finance Bill, 2002 receives the assent of the President, shall be deemed to be and always to have been, for all purposes, as validly and effectively taken or done or omitted to be done as if sub-section (1) had been in force at all material times and, accordingly, notwithstanding anything contained in any judgment, decree or order of any court, tribunal or other authority, recovery shall be made of all such service tax which have not been collected but which would have been collected, if sub-section (1) had been in force at all material times, within a period of thirty days from the date on which the Finance Bill, 2002 receives the assent of the President, and in the event of non-payment of such service tax so recoverable, interest at the rate of fifteen per cent. per annum shall be payable, from the date immediately after the expiry of the said period of thirty days, till the date of payment.

Explanation.—For the removal of doubts, it is hereby declared that no act or omission on the part of any person shall be punishable as an offence which would have not been so punishable if this section had not come into force.

Amendment
of Act
52 of 1994.

149. In the Finance Act, 1994, with effect from such date as the Central Government may, by notification in the Official Gazette, appoint,—

Definitions.

(a) for section 65, the following section shall be substituted, namely:—

‘65. (1) In this Chapter, unless the context otherwise requires,—

(1) “actuary” has the meaning assigned to it in clause (1) of section 2 of the Insurance Act, 1938;

4 of 1938.

(2) “advertisement” includes any notice, circular, label, wrapper, document, hoarding or any other audio or visual representation made by means of light, sound, smoke or gas;

(3) “advertising agency” means any commercial concern engaged in providing any service connected with the making, preparation, display or exhibition of advertisement and includes an advertising consultant;

(4) “air travel agent” means any person engaged in providing any service connected with the booking of passage for travel by air;

(5) “Appellate Tribunal” means the Customs, Excise and Gold (Control) Appellate Tribunal constituted under section 129 of the Customs Act, 1962;

52 of 1962.

(6) “architect” means any person whose name is, for the time being, entered in the register of architects maintained under section 23 of the Architects Act, 1972 and also includes any commercial concern engaged in any manner, whether directly or indirectly, in rendering services in the field of architecture;

20 of 1972.

(7) “assessee” means a person liable to pay the service tax and includes his agent;

(8) “authorised service station” means any service station, or centre, authorised by any motor vehicle manufacturer, to carry out any service or repair of any motor car or two wheeled motor vehicle manufactured by such manufacturer;

(9) “banking” shall have the meaning assigned to it in clause (b) of section 5 of the Banking Regulation Act, 1949;

10 of 1949.

(10) “banking company” shall have the meaning assigned to it in clause (a) of section 45A of the Reserve Bank of India Act, 1934;

2 of 1934.

(11) “banking and other financial services” means the following services provided by a banking company or a financial institution including a non-banking financial company or any other body corporate, namely:—

(i) financial leasing services including equipment leasing and hire-purchase by a body corporate;

(ii) credit card services;

(iii) merchant banking services;

(iv) securities and foreign exchange (forex) broking;

(v) asset management including portfolio management, all forms of fund management, pension fund management, custodial, depository and trust services, but does not include cash management;

- (vi) advisory and other auxiliary financial services including investment and portfolio research and advice, advice on mergers and acquisitions and advice on corporate restructuring and strategy; and
- (vii) provision and transfer of information and data processing;
- 54 of 1963. (12) "Board" means the Central Board of Excise and Customs constituted under the Central Board of Revenue Act, 1963;
- 1 of 1956. (13) "body corporate" shall have the meaning assigned to it in clause (7) of section 2 of the Companies Act, 1956;
- 25 of 1990. (14) "broadcasting" has the meaning assigned to it in clause (c) of section 2 of the Prasar Bharati (Broadcasting Corporation of India) Act, 1990 and also includes programme selection, scheduling or presentation of sound or visual matter on a radio or a television channel that is intended for public listening or viewing, as the case may be; and in the case of a broadcasting agency or organisation, having its head office situated in any place outside India, includes the activity of selling of time slots or obtaining sponsorships for broadcasting of any programme or collecting the broadcasting charges on behalf of the said agency or organisation, by its branch office or subsidiary or representative in India or any agent appointed in India or by any person who acts on its behalf in any manner;
- (15) "broadcasting agency or organisation" means any agency or organisation engaged in providing service in relation to broadcasting in any manner and, in the case of a broadcasting agency or organisation, having its head office situated in any place outside India, includes its branch office or subsidiary or representative in India or any agent appointed in India or any person who acts on its behalf in any manner, engaged in the activity of selling of time slots for broadcasting of any programme or obtaining sponsorships for programme or collecting broadcasting charges on behalf of the said agency or organisation;
- (16) "beauty treatment" means face and beauty treatment, cosmetic treatment, manicure, pedicure or counselling services on beauty, face care or make-up;
- (17) "beauty parlour" means any establishment providing beauty treatment services;
- (18) "cab" means a motor cab or maxi cab;
- 7 of 1995. (19) "cable operator" shall have the meaning assigned to it in clause (aa) of section 2 of the Cable Television Networks (Regulation) Act, 1995;
- 7 of 1995. (20) "cable service" shall have the meaning assigned to it in clause (b) of section 2 of the Cable Television Networks (Regulation) Act, 1995;
- (21) "cargo handling service" means loading, unloading, packing or unpacking of cargo and includes cargo handling services provided for freight in special containers or for non-containerised freight, services provided by a container freight terminal or any other freight terminal, for all modes of transport and cargo handling services incidental to freight, but does not include handling of export cargo or passenger baggage or mere transportation of goods;
- (22) "caterer" means any person who supplies, either directly or indirectly, any food, edible preparations, alcoholic or non-alcoholic beverages or crockery and similar articles or accoutrements for any purpose or occasion;

(23) "clearing and forwarding agent" means any person who is engaged in providing any service, either directly or indirectly, connected with the clearing and forwarding operations in any manner to any other person and includes a consignment agent;

(24) "computer network" has the meaning assigned to it in clause (j) of sub-section (1) of section 2 of the Information Technology Act, 2000;

21 of 2000

(25) "consulting engineer" means any professionally qualified engineer or an engineering firm who, either directly or indirectly, renders any advice, consultancy or technical assistance in any manner to a client in one or more disciplines of engineering;

(26) "convention" means a formal meeting or assembly which is not open to the general public, and does not include a meeting or assembly, the principal purpose of which is to provide any type of amusement, entertainment or recreation;

(27) "courier agency" means a commercial concern engaged in the door-to-door transportation of time-sensitive documents, goods or articles utilising the services of a person, either directly or indirectly, to carry or accompany such documents, goods or articles;

(28) "credit rating agency" means any commercial concern engaged in the business of credit rating of any debt obligation or of any project or programme requiring finance, whether in the form of debt or otherwise, and includes credit rating of any financial obligation, instrument or security, which has the purpose of providing a potential investor or any other person any information pertaining to the relative safety of timely payment of interest or principal;

(29) "custom house agent" means a person licensed, temporarily or otherwise, under the regulations made under sub-section (2) of section 146 of the Customs Act, 1962;

52 of 1962.

(30) "data" has the meaning assigned to it in clause (o) of sub-section (1) of section 2 of the Information Technology Act, 2000;

21 of 2000.

(31) "dry cleaning" includes dry cleaning of apparels, garments or other textile, fur or leather articles;

(32) "dry cleaner" means any commercial concern providing service in relation to dry cleaning;

(33) "electronic form" has the meaning assigned to it in clause (r) of sub-section (1) of section 2 of the Information Technology Act, 2000;

21 of 2000.

(34) "event management" means any service provided in relation to planning, promotion, organising or presentation of any arts, entertainment, business, sports or any other event and includes any consultation provided in this regard;

(35) "event manager" means any person who is engaged in providing any service in relation to event management in any manner;

(36) "facsimile (FAX)" means a form of telecommunication by which fixed graphic images, such as printed texts and pictures are scanned and the information converted into electrical signals for transmission over the telecommunication system;

(37) "fashion designing" includes any activity relating to conceptualising, outlining, creating the designs and preparing patterns for costumes, apparels, garments, clothing accessories, jewellery or any other articles intended to be worn by human beings and any other service incidental thereto;

- (38) "fashion designer" means any person engaged in providing service in relation to fashion designing;
- 2 of 1934 (39) "financial institution" has the meaning assigned to it in clause (c) of section 45-I of the Reserve Bank of India Act, 1934;
- 57 of 1972 (40) "general insurance business" has the meaning assigned to it in clause (g) of section 3 of the General Insurance Business (Nationalisation) Act, 1972;
- 3 of 1930 (41) "goods" has the meaning assigned to it in clause (7) of section 2 of the Sale of Goods Act, 1930;
- (42) "health and fitness service" means service for physical well-being such as, sauna and steam bath, turkish bath, solarium, spas, reducing or slimming salons, gymnasium, yoga, meditation, massage (excluding therapeutic massage) or any other like service;
- (43) "health club and fitness centre" means any establishment, including a hotel or resort, providing health and fitness service;
- 21 of 2000. (44) "information" has the meaning assigned to it in clause (v) of sub-section (1) of section 2 of the Information Technology Act, 2000;
- 4 of 1938. (45) "insurance agent" has the meaning assigned to it in clause (10) of section 2 of the Insurance Act, 1938;
- (46) "insurance auxiliary service" means any service provided by an actuary, an intermediary or insurance intermediary or an insurance agent in relation to general insurance business or life insurance business and includes risk assessment, claim settlement, survey and loss assessment;
- (47) "intermediary or insurance intermediary" has the meaning assigned to it in sub-clause (f) of clause (1) of section 2 of the Insurance Regulatory and Development Authority Act, 1999;
- 41 of 1999. (48) "insurer" means any person carrying on the general insurance business or life insurance business in India;
- (49) "interior decorator" means any person engaged, whether directly or indirectly, in the business of providing by way of advice, consultancy, technical assistance or in any other manner, services related to planning, design or beautification of spaces, whether man-made or otherwise and includes a landscape designer;
- (50) "leased circuit" means a dedicated link provided between two fixed locations for exclusive use of the subscriber and includes a speech circuit, a data circuit or a telegraph circuit;
- 4 of 1938. (51) "life insurance business" has the meaning assigned to it in clause (11) of section 2 of the Insurance Act, 1938;
- (52) "magnetic storage device" includes wax blanks, discs or blanks, strips or films for the purpose of original sound recording;
- (53) "management consultant" means any person who is engaged in providing any service, either directly or indirectly, in connection with the management of any organisation in any manner and includes any person who renders any advice, consultancy or technical assistance, relating to conceptualising, devising, development, modification, rectification or upgradation of any working system of any organisation;
- 4 of 1882. (54) "mandap" means any immovable property as defined in section 3 of the Transfer of Property Act, 1882 and includes any furniture, fixtures, light fittings and floor coverings therein let out for a consideration for organising any official, social or business function;

(55) "mandap keeper" means a person who allows temporary occupation of a mandap for a consideration for organising any official, social or business function;

(56) "manpower recruitment agency" means any commercial concern engaged in providing any service, directly or indirectly, in any manner for recruitment of manpower, to a client;

(57) "market research agency" means any commercial concern engaged in conducting market research in any manner, in relation to any product, service or utility, including all types of customised and syndicated research services;

(58) "maxi cab" has the meaning assigned to it in clause (22) of section 2 of the Motor Vehicles Act, 1988; 59 of 1988.

(59) "motor cab" has the meaning assigned to it in clause (25) of section 2 of the Motor Vehicles Act, 1988; 59 of 1988.

(60) "non-banking financial company" has the meaning assigned to it in clause (f) of section 45-I of the Reserve Bank of India Act, 1934; 2 of 1934.

(61) "on-line information and database access or retrieval" means providing data or information, retrievable or otherwise, to a customer, in electronic form through a computer network;

(62) "pager" means an instrument, apparatus or appliance which is a non-speech, one way personal calling system with alert and has the capability of receiving, storing and displaying numeric or alpha-numeric messages;

(63) "photography" includes still photography, motion picture photography, laser photography, aerial photography or fluorescent photography;

(64) "photography studio or agency" means any professional photographer or a commercial concern engaged in the business of rendering service relating to photography;

(65) "policy holder" has the meaning assigned to it in clause (2) of section 2 of the Insurance Act, 1938; 4 of 1938.

(66) "port" has the meaning assigned to it in clause (g) of section 2 of the Major Port Trusts Act, 1963; 38 of 1963.

(67) "port services" means any service rendered by a port or any person authorised by the port, in any manner, in relation to a vessel or goods;

(68) "practising chartered accountant" means a person who is a member of the Institute of Chartered Accountants of India and is holding a certificate of practice granted under the provisions of the Chartered Accountants Act, 1949 and includes any concern engaged in rendering services in the field of chartered accountancy; 38 of 1949.

(69) "practising cost accountant" means a person who is a member of the Institute of Cost and Works Accountants of India and is holding a certificate of practice granted under the provisions of the Cost and Works Accountants Act, 1959 and includes any concern engaged in rendering services in the field of cost accountancy; 23 of 1959.

(70) "practising company secretary" means a person who is a member of the Institute of Company Secretaries of India and is holding a certificate of practice granted under the provisions of the Company Secretaries Act, 1980 and includes any concern engaged in rendering services in the field of company secretaryship; 56 of 1980.

(71) "prescribed" means prescribed by rules made under this Chapter;

(72) "rail travel agent" means any person engaged in providing any service connected with booking of passage for travel by rail;

(73) "real estate agent" means a person who is engaged in rendering any service in relation to sale, purchase, leasing or renting, of real estate and includes a real estate consultant;

(74) "real estate consultant" means a person who renders in any manner, either directly or indirectly, advice, consultancy or technical assistance, in relation to evaluation, conception, design, development, construction, implementation, supervision, maintenance, marketing, acquisition or management, of real estate;

42 of 1956.

(75) "recognised stock exchange" has the meaning assigned to it in clause (f) of section 2 of the Securities Contracts (Regulation) Act, 1956;

(76) "rent-a-cab scheme operator" means any person engaged in the business of renting of cabs;

(77) "scientific or technical consultancy" means any advice, consultancy, or scientific or technical assistance, rendered in any manner, either directly or indirectly, by a scientist or a technocrat, or any science or technology institution or organisation, to a client, in one or more disciplines of science or technology;

42 of 1956.

(78) "securities" has the meaning assigned to it in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956;

(79) "security agency" means any commercial concern engaged in the business of rendering services relating to the security of any property, whether movable or immovable, or of any person, in any manner and includes the services of investigation, detection or verification, of any fact or activity, whether of a personal nature or otherwise, including the services of providing security personnel;

(80) "service tax" means tax leviable under the provisions of this Chapter;

(81) "ship" means a sea-going vessel and includes a sailing vessel;

(82) "shipping line" means any person who owns or charters a ship and includes an enterprise which operates or manages the business of shipping;

(83) "sound recording" means recording of sound on a magnetic storage device and includes editing thereof, in any manner;

(84) "sound recording studio or agency" means any commercial concern engaged in the business of rendering any service relating to sound recording;

(85) "steamer agent" means any person who undertakes, either directly or indirectly,—

(a) to perform any service in connection with the ship's husbandry or dispatch including the rendering of administrative work related thereto; or

(b) to book, advertise or canvass for cargo for or on behalf of a shipping line; or

(c) to provide container feeder services for or on behalf of a shipping line;

(86) "stock-broker" means a stock-broker who has either made an application for registration or is registered as a stock-broker in accordance with the rules and regulations made under the Securities and Exchange Board of India Act, 1992;

15 of 1992.

(87) "storage and warehousing" includes storage and warehousing services for goods including liquids and gases but does not include any service provided for storage of agricultural produce or any service provided by a cold storage;

(88) "sub-broker" means a sub-broker who has either made an application for registration or is registered as a sub-broker in accordance with the rules and regulations made under the Securities and Exchange Board of India Act, 1992;

15 of 1992.

(89) "subscriber" means a person to whom any service of a telephone connection or a facsimile or a leased circuit or a pager or a telegraph or a telex has been provided by the telegraph authority;

(90) "taxable service" means any service provided,—

(a) to an investor, by a stock-broker in connection with the sale or purchase of securities listed on a recognised stock exchange;

(b) to a subscriber, by the telegraph authority in relation to a telephone connection;

(c) to a subscriber, by the telegraph authority in relation to a pager;

(d) to a policy holder, by an insurer carrying on general insurance business in relation to general insurance business;

(e) to a client, by an advertising agency in relation to advertisement, in any manner;

(f) to a customer, by a courier agency in relation to door-to-door transportation of time-sensitive documents, goods or articles;

(g) to a client, by a consulting engineer in relation to advice, consultancy or technical assistance in any manner in one or more disciplines of engineering;

(h) to a client, by a custom house agent in relation to the entry or departure of conveyances or the import or export of goods;

(i) to a shipping line, by a steamer agent in relation to a ship's husbandry or dispatch or any administrative work related thereto as well as the booking, advertising or canvassing of cargo, including container feeder services;

(j) to a client, by a clearing and forwarding agent in relation to clearing and forwarding operations, in any manner;

(k) to a client, by a manpower recruitment agency in relation to the recruitment of manpower, in any manner;

(l) to a customer, by an air travel agent in relation to the booking of passage for travel by air;

(m) to a client, by a mandap keeper in relation to the use of mandap in any manner including the facilities provided to the client in relation to such use and also the services, if any, rendered as a caterer;

(n) to any person, by a tour operator in relation to a tour;

(o) to any person, by a rent-a-cab scheme operator in relation to the renting of a cab;

(p) to a client, by an architect in his professional capacity, in any manner;

(q) to a client, by an interior decorator in relation to planning, design or beautification of spaces, whether man-made or otherwise, in any manner;

(r) to a client, by a management consultant in connection with the management of any organisation, in any manner;

(s) to a client, by a practising chartered accountant in his professional capacity, in any manner;

(t) to a client, by a practising cost accountant in his professional capacity, in any manner;

(u) to a client, by a practising company secretary in his professional capacity, in any manner;

(v) to a client, by a real estate agent in relation to real estate;

(w) to a client, by a security agency in relation to the security of any property or person, by providing security personnel or otherwise and includes the provision of services of investigation, detection or verification of any fact or activity;

(x) to a client, by a credit rating agency in relation to credit rating of any financial obligation, instrument or security;

(y) to a client, by a market research agency in relation to market research of any product, service or utility, in any manner;

(z) to a client, by an underwriter in relation to underwriting, in any manner;

(za) to a client, by a scientist or a technocrat, or any science or technology institution or organisation, in relation to scientific or technical consultancy;

(zb) to a customer, by a photography studio or agency in relation to photography, in any manner;

(zc) to a client, by any commercial concern in relation to holding of a convention, in any manner;

(zd) to a subscriber, by the telegraph authority in relation to a leased circuit;

(ze) to a subscriber, by the telegraph authority in relation to a communication through telegraph;

(zf) to a subscriber, by the telegraph authority in relation to a communication through telex;

(zg) to a subscriber, by the telegraph authority in relation to a facsimile communication;

(zh) to a customer, by a commercial concern, in relation to on-line information and database access or retrieval or both in electronic form through computer network, in any manner;

(zi) to a client, by a video production agency in relation to video-tape production, in any manner;

(zj) to a client, by a sound recording studio or agency in relation to any kind of sound recording;

(zk) to a client, by a broadcasting agency or organisation in relation to broadcasting in any manner and, in the case of a

broadcasting agency or organisation, having its head office situated in any place outside India, includes service provided by its branch office or subsidiary or representative in India or any agent appointed in India or by any person who acts on its behalf in any manner, engaged in the activity of selling of time slots for broadcasting of any programme or obtaining sponsorships for programme or collecting broadcasting charges on behalf of the said agency or organisation.

Explanation.—For the removal of doubts, it is hereby declared that so long as the radio or television programme broadcast is received in India and intended for listening or viewing, as the case may be, by the public, such service shall be a taxable service in relation to broadcasting, even if the encryption of the signals or beaming thereof through the satellite might have taken place outside India;

(zl) to a policy holder or insurer, by an actuary, or intermediary or insurance intermediary or insurance agent, in relation to insurance auxiliary services concerning general insurance business;

(zm) to a customer, by a banking company or a financial institution including a non-banking financial company, in relation to banking and other financial services;

(zn) to any person, by a port or any person authorised by the port, in relation to port services, in any manner;

(zo) to a customer, by an authorised service station, in relation to any service or repair of motor cars or two wheeled motor vehicles, in any manner;

(zp) to a customer, by a body corporate other than the body corporate referred to in sub-clause (zm), in relation to banking and other financial services;

(zq) to a customer, by a beauty parlour in relation to beauty treatment;

(zr) to any person, by a cargo handling agency in relation to cargo handling services;

(zs) to a customer, by a cable operator in relation to cable services;

(zt) to a customer, by a dry cleaner in relation to dry cleaning;

(zu) to a client, by an event manager in relation to event management;

(zv) to any person, by a fashion designer in relation to fashion designing;

(zw) to any person, by a health club and fitness centre in relation to health and fitness services;

(zx) to a policy holder, by an insurer carrying on life insurance business in relation to life insurance business;

(zy) to a policy holder or insurer by an actuary, or intermediary or insurance intermediary or insurance agent, in relation to insurance auxiliary services concerning life insurance business;

(zz) to a customer, by a rail travel agent in relation to booking of passage for travel by rail;

- (zza) to any person, by a storage or warehouse keeper in relation to storage and warehousing of goods;
- and the term "service provider" shall be construed accordingly;
- 13 of 1885. (91) "telegraph" has the meaning assigned to it in clause (1) of section 3 of the Indian Telegraph Act, 1885;
- 13 of 1885. (92) "telegraph authority" has the meaning assigned to it in clause (6) of section 3 of the Indian Telegraph Act, 1885 and includes a person who has been granted a licence under the first proviso to sub-section (1) of section 4 of that Act;
- (93) "telex" means a typed communication by using teleprinters through telex exchanges;
- (94) "tour" means a journey from one place to another irrespective of the distance between such places;
- 59 of 1988. (95) "tourist vehicle" has the meaning assigned to it in clause (43) of section 2 of the Motor Vehicles Act, 1988;
- 59 of 1988. (96) "tour operator" means any person engaged in the business of operating tours in a tourist vehicle covered by a permit granted under the Motor Vehicles Act, 1988 or the rules made thereunder;
- (97) "underwriter" has the meaning assigned to it in clause (f) of rule 2 of the Securities and Exchange Board of India (Underwriters) Rules, 1993;
- (98) "underwriting" has the meaning assigned to it in clause (g) of rule 2 of the Securities and Exchange Board of India (Underwriters) Rules, 1993;
- 38 of 1963. (99) "vessel" has the meaning assigned to it in clause (z) of section 2 of the Major Port Trusts Act, 1963;
- (100) "video production agency" means any professional videographer or any commercial concern engaged in the business of rendering services relating to video-tape production;
- (101) "video-tape production" means the process of any recording of any programme, event or function on a magnetic tape and includes editing thereof, in any manner;
- 1 of 1944. (102) words and expressions used but not defined in this Chapter and defined in the Central Excise Act, 1944 or the rules made thereunder, shall apply, so far as may be, in relation to service tax as they apply in relation to a duty of excise.;
- (b) for section 66, the following section shall be substituted, namely:—
- "66. (1) On and from the date of commencement of this Chapter, there shall be levied a tax (hereinafter referred to as the service tax), at the rate of five per cent. of the value of the taxable services referred to in sub-clauses (a), (b) and (d) of clause (90) of section 65 and collected in such manner as may be prescribed.
- 33 of 1996. (2) With effect from the date notified under section 85 of the Finance (No. 2) Act, 1996, there shall be levied a service tax at the rate of five per cent. of the value of the taxable services referred to in sub-clauses (c), (e) and (f) of clause (90) of section 65 and collected in such manner as may be prescribed.
- 26 of 1997. (3) With effect from the date notified under section 88 of the Finance Act, 1997, there shall be levied a service tax at the rate of five per cent. of the value of the taxable services referred to in sub-clauses (g), (h), (i), (j), (k), (l), (m), (n) and (o) of clause (90) of section 65 and collected in such manner as may be prescribed.

Charge of
service tax.

(4) With effect from the date notified under section 116 of the Finance (No. 2) Act, 1998, there shall be levied a service tax at the rate of five per cent. of the value of the taxable services referred to in sub-clauses (p), (q), (r), (s), (t), (u), (v), (w), (x), (y) and (z) of clause (90) of section 65 and collected in such manner as may be prescribed. 21 of 1998.

(5) With effect from the date notified under section 137 of the Finance Act, 2001, there shall be levied a service tax at the rate of five per cent. of the value of the taxable services referred to in sub-clauses (za), (zb), (zc), (zd), (ze), (zf), (zg), (zh), (zi), (zj), (zk), (zl), (zm), (zn) and (zo) of clause (90) of section 65 and collected in such manner as may be prescribed. 14 of 2001.

(6) With effect from the date notified under section 149 of the Finance Act, 2002, there shall be levied a service tax at the rate of five per cent. of the value of the taxable services referred to in sub-clauses (zp), (zq), (zr), (zs), (zt), (zu), (zv), (zw), (zx), (zy), (zz) and (zza) of clause (90) of section 65 and collected in such manner as may be prescribed.”;

(c) in section 67, in the *Explanation*,—

(i) in clause (e), the word “and” shall be omitted;

(ii) in clause (f), for the words “by such manufacturer,” the words “by such manufacturer; and” shall be substituted;

(iii) after clause (f), the following clause shall be inserted, namely:—

“(g) the commission or any amount received by the rail travel agent from the Railways or the customer.”;

(iv) in the portion beginning with the brackets, letter and words “(b) the cost of” and ending with the words “providing the service; and”, the word “and” shall be omitted;

(v) after the portion beginning with the brackets, letter and words “(c) the cost of parts” and ending with the words “two wheeled motor vehicles”, the following shall be inserted, namely:—

“(d) the air fare collected by air travel agent in respect of service provided by him; and

(e) the rail fare collected by rail travel agent in respect of service provided by him.”;

(d) in section 73,—

(a) section 73 shall be numbered as sub-section (1) thereof, and in sub-section (1) as so numbered,—

(i) in clauses (a) and (b), for the words “has been under-assessed”, occurring in both the clauses, the words “has been under-assessed or service tax has not been paid or has been short-paid” shall respectively be substituted;

(ii) for the portion beginning with the words “he may, in case falling” and ending with the words “of the taxable service.”, the following shall be substituted, namely:—

“he may, in cases falling under clause (a), at any time within five years, and in cases falling under clause (b), at any time within one year, from the relevant date, serve notice on the person chargeable with the service tax which has escaped assessment or has been under-assessed or has not been paid or has been short-paid, or to whom any sum has been erroneously refunded, requiring him to show cause why he should not pay the amount specified in the notice.”;

(b) after sub-section (1) as so numbered, the following sub-sections shall be inserted, namely:—

(2) The Assistant Commissioner of Central Excise or, as the case may be, Deputy Commissioner of Central Excise shall, after considering the representation, if any, made by the person on whom notice is served under sub-section (1), determine the amount of service tax due from such person (not being in excess of the amount specified in the notice) and thereupon such person shall pay the amount so determined.

(3) For the purposes of this section, "relevant date" means,—

(i) in the case of taxable service in respect of which service tax has escaped assessment or has been under-assessed or has not been paid or has been short-paid—

(a) where under the rules made under this Chapter, a periodical return, showing particulars of service tax paid during the period to which the said return relates, is to be filed by an assessee, the date on which such return is so filed;

(b) where no periodical return as aforesaid is filed, the last date on which such return is to be filed under the said rules;

(c) in any other case, the date on which the service tax is to be paid under this Chapter or the rules made thereunder;

(ii) in a case where the service tax is provisionally assessed under this Chapter or the rules made thereunder, the date of adjustment of the service tax after the final assessment thereof;

(iii) in a case where any sum, relating to service tax, has erroneously been refunded, the date of such refund;

(e) in section 75, for the words "twenty-four per cent.", the words "fifteen per cent." shall be substituted;

(f) in section 78, in the proviso, for the words "twenty-five thousand rupees", the words "two lakh rupees" shall be substituted;

(g) in section 82, in sub-section (1),—

(i) for the words "any other", the word "any" shall be substituted;

(ii) for the words "to search or may himself search for such documents or books or things", the words "to search for and seize or may himself search for and seize, such documents or books or things" shall be substituted;

(h) in section 83, after the figures and letters "11BB", the figures and letter "11D," shall be inserted;

(i) in section 94, in sub-section (2), after clause (e), the following clause shall be inserted, namely:—

"(ee) the credit of service tax paid on the services consumed for providing a taxable service in case where the services consumed and the service provided fall in the same category of taxable service;"

(j) for section 95, the following section shall be substituted, namely:—

"95. (1) If any difficulty arises in respect of implementing, or assessing the value of, any taxable service incorporated in this Chapter by the Finance Act, 2002, the Central Government may, by order published in the Official Gazette, which is not inconsistent with the provisions of this Chapter, remove the difficulty:

Provided that no such order shall be made after the expiry of a period of two years from the date on which the provisions of the Finance Act, 2002 incorporating such taxable services in this Chapter come into force.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of the Parliament."

Power to
remove
difficulties.

CHAPTER VI

CENTRAL SALES TAX

Amendment of
section 2.

150. In the Central Sales Tax Act, 1956 (hereinafter referred to as the Central Sales Tax Act), in section 2, for clause (g), the following clause shall be substituted, namely:—

“(g) “sale”, with its grammatical variations and cognate expressions, means any transfer of property in goods by one person to another for cash or deferred payment or for any other valuable consideration, and includes,—

(i) a transfer, otherwise than in pursuance of a contract, of property in any goods for cash, deferred payment or other valuable consideration;

(ii) a transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract;

(iii) a delivery of goods on hire-purchase or any system of payment by instalments;

(iv) a transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration;

(v) a supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration;

(vi) a supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (whether or not intoxicating), where such supply or service, is for cash, deferred payment or other valuable consideration,

but does not include a mortgage or hypothecation of or a charge or pledge on goods;”

Amendment
of section 6A.

151. In section 6A of the Central Sales Tax Act, in sub-section (1), after the words “along with the evidence of despatch of such goods”, the words “and if the dealer fails to furnish such declaration, then, the movement of such goods shall be deemed for all purposes of this Act to have been occasioned as a result of sale” shall be inserted.

Amendment
of section 8.

152. In section 8 of the Central Sales Tax Act,—

(i) in sub-section (1), after the words “four per cent. of his turnover”, the words “or at the rate applicable to the sale or purchase of such goods inside the appropriate State under the sales tax law of that State, whichever is lower” shall be inserted;

(ii) in sub-section (2),—

(a) in clause (a), the word “and” shall be omitted;

(b) in clause (b), for the words “whichever is higher,”, the words “whichever is higher; and” shall be substituted;

(c) for the portion beginning with the words “and for the purpose of” and ending with the words “liable under that law”, the following shall be substituted, namely:—

“(c) in the case of goods, the sale or, as the case may be, the purchase of which is, under the sales tax law of the appropriate State, exempt from tax generally shall be *nil*,

and for the purpose of making any such calculation under clause (a) or clause (b), any such dealer shall be deemed to be a dealer liable to pay tax under the sales tax law of the appropriate State, notwithstanding that he, in fact, may not be so liable under that law.

Explanation.—For the purposes of this sub-section, a sale or purchase of any goods shall not be deemed to be exempt from tax generally under the sales tax law of the appropriate State if under that law the sale or purchase of such goods is exempt only in specified circumstances or

under specified conditions or the tax is levied on the sale or purchase of such goods at specified stages or otherwise than with reference to the turnover of the goods.”;

(iii) sub-section (2A) shall be omitted;

(iv) in sub-section (3), in clause (b), after the words “for sale or”, the words “in the telecommunications network or” shall be inserted;

(v) in sub-section (5),—

(a) in the opening paragraph, after the words “State Government may,”, the words, brackets and figure “on the fulfilment of the requirements laid down in sub-section (4) by the dealer,” shall be inserted;

(b) in clause (a), after the words “inter-State trade or commerce,”, the words “to a registered dealer or the Government” shall be inserted;

(c) in clause (b), after the words “inter-State trade or commerce,”, the words “to a registered dealer or the Government” shall be inserted;

(vi) after sub-section (5), the following sub-sections shall be inserted, namely:—

‘(6) Notwithstanding anything contained in this section, no tax under this Act shall be payable by any dealer in respect of sale of any goods made by such dealer, in the course of inter-State trade or commerce, to a registered dealer for the purpose of manufacture, production, processing, assembling, repairing, re-conditioning, re-engineering, packaging or for use as trading or packing material or packing accessories in an unit located in any special economic zone, if such registered dealer has been authorised to establish such unit by the authority specified by the Central Government in this behalf.

(7) The goods referred to in sub-section (6) shall be the goods of such class or classes of goods as specified in the certificate of registration of the registered dealer referred to in that sub-section.

(8) The provisions of sub-sections (6) and (7) shall not apply to any sale of goods made in the course of inter-State trade or commerce unless the dealer selling such goods furnishes to the authority referred to in sub-section (6), a declaration in the prescribed manner on the prescribed form obtained from the authority referred to in sub-section (5), duly filled in and signed by the registered dealer to whom such goods are sold.

Explanation.—For the purposes of sub-section (6), the expression “special economic zone” has the meaning assigned to it in clause (iii) to *Explanation 2* to the proviso to section 3 of the Central Excise Act, 1944.’

1 of 1944.

153. In section 10 of the Central Sales Tax Act,—

Amendment
of section 10.

(i) in clause (a), after the word, brackets and figure “sub-section (4)”, the words, brackets and figure “or sub-section (8)” shall be inserted;

(ii) in clause (d), after the word, brackets and figure “sub-section (3)”, the words, brackets and figure “or sub-section (6)” shall be inserted;

(iii) in clause (e), after the words, brackets and figure “or sub-section (4)”, the words, brackets and figure “or sub-section (8)” shall be inserted.

154. In section 13 of the Central Sales Tax Act, in sub-section (1), after clause (a), the following clause shall be inserted, namely:—

Amendment
of section 13.

“(aa) the form and the manner for furnishing declaration under sub-section (8) of section 8;”.

155. In section 15 of the Central Sales Tax Act, in clause (a), the words “, and such tax shall not be levied at more than one stage” shall be omitted.

Amendment
of section 15.

CHAPTER VII

MISCELLANEOUS

Amendment
of Act
6 of 1898.

156. In the Indian Post Office Act, 1898, with effect from such date as the Central Government may, by notification in the Official Gazette, appoint, for the First Schedule, the following Schedule shall be substituted, namely:—

“THE FIRST SCHEDULE

(See section 7)

INLAND POSTAGE RATES

Letters

For a weight not exceeding twenty grams	Rs. 5.00
For every twenty grams, or fraction thereof, exceeding twenty grams	Rs. 5.00.

Letter-cards

For a letter-card	Rs. 2.50.
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Post cards

Post cards (not being post cards containing printed communication, competition post cards or *Meghdoot* post cards)

Single	50 paise
Reply	Re. 1.00.

Meghdoot post cards

Post cards containing printed advertisement on the address side (not being post cards containing printed communication or competition post cards)

For a <i>Meghdoot</i> post card	25 paise.
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Printed post cards

Post cards containing printed communication (not being competition post cards or *Meghdoot* post cards)

For a post card	Rs. 6.00.
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Explanation.—A post card shall be deemed to contain a printed communication, if any matter (except the name and address of, and other particulars relating to, the sender and the place and date of despatch) is recorded by printing or by cyclostyling or by any other mechanical process, not being typewriting, on any part of the post card except the right hand half of the address-side thereof.

Competition post cards

For a post card	Rs. 10.00.
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Explanation.—A post card shall be deemed to be a competition post card if it is used in response to any competition organised on or through television, radio, newspaper, magazine or any other media.

Book, pattern and sample packets

For the first fifty grams or fraction thereof	Rs. 4.00
For every additional fifty grams, or fraction thereof, in excess of fifty grams	Rs. 3.00.

Registered newspapers

For a weight not exceeding fifty grams	25 paise
For a weight exceeding fifty grams but not exceeding one hundred grams	50 paise
For every additional one hundred grams, or fraction thereof, exceeding one hundred grams	20 paise.

In the case of more than one copy of the same issue of a registered newspaper being carried in the same packet—

for a weight not exceeding one hundred grams 50 paise

for every additional one hundred grams, or fraction thereof, exceeding one hundred grams 20 paise:

Provided that such packet shall not be delivered at any addressee's residence but shall be given to a recognised agent at the Post Office.

Parcels

For a weight not exceeding five hundred grams Rs. 19.00.

For every five hundred grams, or fraction thereof, exceeding five hundred grams Rs. 16.00."

157. Section 43A of the Life Insurance Corporation Act, 1956 shall be omitted with effect from the 1st day of June, 2002.

Omission of section 43A of Act 31 of 1956
Omission of section 35A of Act 57 of 1972.

158. Section 35A of the General Insurance Business (Nationalisation) Act, 1972 shall be omitted with effect from the 1st day of June, 2002.

159. In the Oil Industry (Development) Act, 1974 [hereinafter referred to as the Oil Industry (Development) Act], section 22A shall be omitted with effect from the 1st day of April, 2003.

Omission of section 22A of Act 47 of 1974.

160. In the Schedule to the Oil Industry (Development) Act, against Sl. No. 1 relating to crude oil, for the entry in column 3, the entry "Rupees two thousand per tonne." shall be substituted.

Amendment of the Schedule to Act 47 of 1974.

161. (1) The notification of the Government of India in the Ministry of Petroleum and Natural Gas No. S.O. 417(E), dated the 12th April, 2002 issued under sub-section (4) of section 15 of the Oil Industry (Development) Act read with section 5A of the Central Excise Act, by the Central Government, shall be deemed to have come into force on and from the 1st day of March, 2002 retrospectively and accordingly, notwithstanding anything contained in any judgement, decree or order of any court, tribunal or other authority, any action taken or anything done or purported to have been taken or done under the said notification, shall be deemed to be and always to have been, for all purposes, as validly or effectively taken or done as if the notification as amended by this sub-section had been in force at all material times.

Amendment of notification issued under sub-section (4) of section 15 of the Oil Industry (Development) Act read with section 5A of the Central Excise Act.

(2) For the purposes of sub-section (1), the Central Government shall have and shall be deemed to have the power to exempt the goods specified in the notification referred to in the said sub-section with retrospective effect as if the Central Government had the power to exempt the said goods under sub-section (4) of section 15 of the Oil Industry (Development) Act read with section 5A of the Central Excise Act, retrospectively, at all material times.

(3) Refund shall be made of all such duty of excise, which have been collected, but which would not have been so collected, if the exemption referred to in sub-section (1) had been in force at all material times.

(4) Notwithstanding anything contained in section 11B of the Central Excise Act, an application for the claim of refund of the duty of excise under sub-section (3) shall be made within one year from the date on which the Finance Bill, 2002 receives the assent of the President.

Explanation.—For the removal of doubts, it is hereby declared that no act or omission on the part of any person shall be punishable as an offence which would have been so punishable if the notification referred to in this section had not been amended retrospectively by this section.

162. Section 44 of the National Dairy Development Board Act, 1987 shall be omitted with effect from the 1st day of April, 2003.

Omission of section 44 of Act 37 of 1987

163. Section 22 of the Prasar Bharati (Broadcasting Corporation of India) Act, 1990 shall be omitted with effect from the 1st day of April, 2003.

Omission of section 22 of Act 25 of 1990

THE FIRST SCHEDULE

(See section 2)

PART I

INCOME-TAX

Paragraph A

In the case of every individual or Hindu undivided family or association of persons or body of individuals, whether incorporated or not, or every artificial juridical person referred to in sub-clause (vii) of clause (31) of section 2 of the Income-tax Act, not being a case to which any other Paragraph of this Part applies,—

Rates of income-tax

- | | |
|--|---|
| (1) where the total income does not exceed Rs. 50,000 | <i>Nil</i> ; |
| (2) where the total income exceeds Rs. 50,000 but does not exceed Rs. 60,000 | 10 per cent. of the amount by which the total income exceeds Rs. 50,000; |
| (3) where the total income exceeds Rs. 60,000 but does not exceed Rs. 1,50,000 | Rs. 1,000 <i>plus</i> 20 per cent. of the amount by which the total income exceeds Rs. 60,000; |
| (4) where the total income exceeds Rs. 1,50,000 | Rs. 19,000 <i>plus</i> 30 per cent. of the amount by which the total income exceeds Rs. 1,50,000. |

Surcharge on income-tax

The amount of income-tax computed in accordance with the preceding provisions of this Paragraph or in section 112 or section 113 shall,—

(i) in the case of every individual or Hindu undivided family or association of persons or body of individuals having a total income exceeding sixty thousand rupees, be reduced by the amount of rebate of income-tax calculated under Chapter VIII-A, and the income-tax as so reduced, be increased by a surcharge for purposes of the Union calculated at the rate of two per cent. of such income-tax;

(ii) in the case of every person, other than those mentioned in item (i), be increased by a surcharge for purposes of the Union calculated at the rate of two per cent. of such income-tax:

Provided that in case of persons mentioned in item (i) above having a total income exceeding sixty thousand rupees, the total amount payable as income-tax and surcharge on such income shall not exceed the total amount payable as income-tax on a total income of sixty thousand rupees by more than the amount of income that exceeds sixty thousand rupees.

Paragraph B

In the case of every co-operative society,—

Rates of income-tax

- | | |
|--|--|
| (1) where the total income does not exceed Rs. 10,000 | 10 per cent. of the total income; |
| (2) where the total income exceeds Rs. 10,000 but does not exceed Rs. 20,000 | Rs. 1,000 <i>plus</i> 20 per cent. of the amount by which the total income exceeds Rs. 10,000; |

(3) where the total income exceeds
Rs. 20,000

Rs. 3,000 plus 30 per cent. of the amount
by which the total income exceeds
Rs. 20,000.

Surcharge on income-tax

The amount of income-tax computed in accordance with the preceding provisions of this Paragraph or in section 112 or section 113, shall, in the case of every co-operative society, be increased by a surcharge for purposes of the Union calculated at the rate of two per cent. of such income-tax.

Paragraph C

In the case of every firm,—

Rate of income-tax

On the whole of the total income — 35 per cent.

Surcharge on income-tax

The amount of income-tax computed at the rate hereinbefore specified or in section 112 or section 113, shall, in the case of every firm, be increased by a surcharge for purposes of the Union calculated at the rate of two per cent. of such income-tax.

Paragraph D

In the case of every local authority,—

Rate of income-tax

On the whole of the total income — 30 per cent.

Surcharge on income-tax

The amount of income-tax computed at the rate hereinbefore specified, or in section 112 or section 113, shall, in the case of every local authority, be increased by a surcharge for purposes of the Union calculated at the rate of two per cent. of such income-tax.

Paragraph E

In the case of a company,—

Rates of income-tax

I. In the case of a domestic company — 35 per cent. of the total income;

II. In the case of a company other than a domestic company—

(i) on so much of the total income as consists of,—

(a) royalties received from Government or an Indian concern in pursuance of an agreement made by it with the Government or the Indian concern after the 31st day of March, 1961 but before the 1st day of April, 1976, or

(b) fees for rendering technical services received from Government or an Indian concern in pursuance of an agreement made by it with the Government or the Indian concern after the 29th day of February, 1964 but before the 1st day of April, 1976,

and where such agreement has, in either case, been approved by the Central Government — 50 per cent.

(ii) on the balance, if any, of the total income — 48 per cent.

Surcharge on income-tax

The amount of income-tax computed in accordance with the preceding provisions of item I of this Paragraph, or in section 112 or section 113, shall, in the case of every domestic company, be increased by a surcharge for purposes of the Union calculated at the rate of two per cent. of such income-tax.

PART II**RATES FOR DEDUCTION OF TAX AT SOURCE IN CERTAIN CASES**

In every case in which under the provisions of sections 193, 194, 194A, 194B, 194BB, 194D and 195 of the Income-tax Act, tax is to be deducted at the rates in force, deduction shall be made from the income subject to the deduction at the following rates:—

	Rate of income-tax
1. In the case of a person other than a company—	
(a) where the person is resident in India—	
(i) on income by way of interest other than "Interest on securities"	10 per cent.;
(ii) on income by way of dividend	10 per cent.;
(iii) on income by way of winnings from lotteries, crossword puzzles, card games and other games of any sort	30 per cent.;
(iv) on income by way of winnings from horse races	30 per cent.;
(v) on income by way of insurance commission	10 per cent.;
(vi) on income by way of interest payable on—	10 per cent.;
(A) any debentures or securities other than a security of the Central or State Government for money issued by or on behalf of any local authority or a corporation established by a Central, State or Provincial Act;	
(B) any debentures issued by a company where such debentures are listed on a recognised stock exchange in India in accordance with the Securities Contracts (Regulation) Act, 1956 (42 of 1956) and any rules made thereunder	
(vii) on any other income	20 per cent.;
(b) where the person is not resident in India—	
(i) in the case of a non-resident Indian—	
(A) on any investment income	20 per cent.;
(B) on income by way of long-term capital gains referred to in section 115E	10 per cent.;
(C) on other income by way of long-term capital gains	20 per cent.;
(D) on income by way of interest payable by Government or an Indian concern on moneys borrowed or debt incurred by Government or the Indian concern in foreign currency	20 per cent.;
(E) on income by way of winnings from lotteries, crossword puzzles, card games and other games of any sort	30 per cent.;
(F) on income by way of winnings from horse races	30 per cent.;
(G) on the whole of the other income	30 per cent.;
(ii) in the case of any other person—	
(A) on income by way of interest payable by Government or an Indian concern on moneys borrowed or debt incurred by Government or the Indian concern in foreign currency	20 per cent.;

(B) on income by way of winnings from lotteries, crossword puzzles, card games and other games of any sort	30 per cent.;
(C) on income by way of winnings from horse races	30 per cent.;
(D) on income by way of long-term capital gains	20 per cent.;
(E) on the whole of the other income	30 per cent.

2. In the case of a company—

(a) where the company is a domestic company—

(i) on income by way of interest other than "Interest on securities"	20 per cent.;
(ii) on income by way of dividend	10 per cent.;
(iii) on income by way of winnings from lotteries, crossword puzzles, card games and other games of any sort	30 per cent.;
(iv) on income by way of winnings from horse races	30 per cent.;
(v) on any other income	20 per cent.;

(b) where the company is not a domestic company—

(i) on income by way of winnings from lotteries, crossword puzzles, card games and other games of any sort	30 per cent.;
(ii) on income by way of winnings from horse races	30 per cent.;
(iii) on income by way of interest payable by Government or an Indian concern on moneys borrowed or debt incurred by Government or the Indian concern in foreign currency	20 per cent.;

(iv) on income by way of royalty payable by Government or an Indian concern in pursuance of an agreement made by it with the Government or the Indian concern after the 31st day of March, 1976, where such royalty is in consideration for the transfer of all or any rights (including the granting of a licence) in respect of copyright in any book on a subject referred to in the first proviso to sub-section (1A) of section 115A of the Income-tax Act, to the Indian concern, or in respect of any computer software referred to in the second proviso to sub-section (1A) of section 115A of the Income-tax Act, to a person resident in India—

(A) where the agreement is made before the 1st day of June, 1997 30 per cent.;

(B) where the agreement is made on or after the 1st day of June, 1997 20 per cent.;

(v) on income by way of royalty [not being royalty of the nature referred to in sub-item (b)(iv)] payable by Government or an Indian concern in pursuance of an agreement made by it with the Government or the Indian concern and where such agreement is with an Indian concern, the agreement is approved by the Central Government or where it relates to a matter included in the industrial policy, for the time being in force, of the Government of India, the agreement is in accordance with that policy—

(A) where the agreement is made after the 31st day of March, 1961 but before the 1st day of April, 1976 50 per cent.;

(B) where the agreement is made after the 31st day of March, 1976 but before the 1st day of June, 1997 30 per cent.;

(C) where the agreement is made on or after the 1st day of June, 1997 20 per cent.;

(vi) on income by way of fees for technical services payable by Government or an Indian concern in pursuance of an agreement made by it with the Government or the Indian concern and where such agreement is with an Indian concern, the agreement is approved by the Central Government or where it relates to a matter included in the industrial policy, for the time being in force, of the Government of India, the agreement is in accordance with that policy—

(A) where the agreement is made after the 29th day of February, 1964 but before the 1st day of April, 1976 50 per cent.;

(B) where the agreement is made after the 31st day of March, 1976 but before the 1st day of June, 1997 30 per cent.;

(C) where the agreement is made on or after the 1st day of June, 1997 20 per cent.;

(vii) on income by way of long-term capital gains 20 per cent.;

(viii) on any other income 40 per cent.

Explanation.—For the purpose of item 1(b)(i) of this Part, “investment income” and “non-resident Indian” shall have the meanings assigned to them in Chapter XII-A of the Income-tax Act.

Surcharge on income-tax

The amount of income-tax deducted in accordance with the provisions of this Part shall be increased by a surcharge, for purposes of the Union, calculated at the rate of five per cent. of such income-tax.

PART III

RATES FOR CHARGING INCOME-TAX IN CERTAIN CASES, DEDUCTING INCOME-TAX FROM INCOME CHARGEABLE UNDER THE HEAD “SALARIES” AND COMPUTING “ADVANCE TAX”

In cases in which income-tax has to be charged under sub-section (4) of section 172 of the Income-tax Act or sub-section (2) of section 174 or section 174A or section 175 or sub-section (2) of section 176 of the said Act or deducted from, or paid on, income chargeable under the head “Salaries” under section 192 of the said Act or in which the “advance tax” payable under Chapter XVII-C of the said Act has to be computed at the rate or rates in force, such income-tax or, as the case may be, “advance tax” [not being “advance tax” in respect of any income chargeable to tax under Chapter XII or Chapter XII-A or section 115JB or sub-section (1A) of section 161 or section 164 or section 164A or section 167B of the Income-tax Act at the rates as specified in that Chapter or section or surcharge on such “advance tax” in respect of any income chargeable to tax under section 115A or section 115AB or section 115AC or section 115ACA or section 115AD or section 115B or section 115BB or section 115BBA or section 115BBB or section 115E or section 115JB] shall be charged, deducted or computed at the following rate or rates:—

Paragraph A

In the case of every individual or Hindu undivided family or association of persons or body of individuals, whether incorporated or not, or every artificial juridical person referred to in sub-clause (vii) of clause (31) of section 2 of the Income-tax Act, not being a case to which any other Paragraph of this Part applies,—

Rates of income-tax

- | | |
|--|--|
| (1) where the total income does not exceed Rs. 50,000 | Nil; |
| (2) where the total income exceeds Rs. 50,000 but does not exceed Rs. 60,000 | 10 per cent. of the amount by which the total income exceeds Rs. 50,000; |

- | | |
|--|---|
| (3) where the total income exceeds Rs. 60,000 but does not exceed Rs. 1,50,000 | Rs. 1,000 <i>plus</i> 20 per cent. of the amount by which the total income exceeds Rs. 60,000; |
| (4) where the total income exceeds Rs. 1,50,000 | Rs. 19,000 <i>plus</i> 30 per cent. of the amount by which the total income exceeds Rs. 1,50,000. |

Surcharge on income-tax

The amount of income-tax computed in accordance with the preceding provisions of this Paragraph or in section 112 shall,—

(i) in the case of every individual or Hindu undivided family, or association of persons or body of individuals having a total income exceeding sixty thousand rupees, be reduced by the amount of rebate of income-tax calculated under Chapter VIII-A, and the income-tax as so reduced, be increased by a surcharge for purposes of the Union calculated at the rate of five per cent. of such income-tax;

(ii) in the case of every person other than those mentioned in item (i), be increased by a surcharge for purposes of the Union calculated at the rate of five per cent. of such income-tax:

Provided that in case of persons mentioned in item (i) above having a total income exceeding sixty thousand rupees, the total amount payable as income-tax and surcharge on such income shall not exceed the total amount payable as income-tax on a total income of sixty thousand rupees by more than the amount of income that exceeds sixty thousand rupees.

Paragraph B

In the case of every co-operative society,—

Rates of income-tax

- | | |
|--|--|
| (1) where the total income does not exceed Rs. 10,000 | 10 per cent. of the total income; |
| (2) where the total income exceeds Rs. 10,000 but does not exceed Rs. 20,000 | Rs. 1,000 <i>plus</i> 20 per cent. of the amount by which the total income exceeds Rs. 10,000; |
| (3) where the total income exceeds Rs. 20,000 | Rs. 3,000 <i>plus</i> 30 per cent. of the amount by which the total income exceeds Rs. 20,000. |

Surcharge on income-tax

The amount of income-tax computed in accordance with the preceding provisions of this Paragraph, or in section 112, shall, in the case of every co-operative society, be increased by a surcharge for purposes of the Union calculated at the rate of five per cent. of such income-tax.

Paragraph C

In the case of every firm,—

Rate of income-tax

On the whole of the total income 35 per cent.

Surcharge on income-tax

The amount of income-tax computed at the rate hereinbefore specified, or in section 112, shall, in the case of every firm, be increased by a surcharge for purposes of the Union calculated at the rate of five per cent. of such income-tax.

Paragraph D

In the case of every local authority,—

Rate of income-tax

On the whole of the total income

30 per cent.

Surcharge on income-tax

The amount of income-tax computed at the rate hereinbefore specified, or in section 112, shall, in the case of every local authority, be increased by a surcharge for purposes of the Union calculated at the rate of five per cent. of such income-tax.

Paragraph E

In the case of a company,—

Rates of income-tax

I. In the case of a domestic company

35 per cent. of the total income;

II. In the case of a company other than a domestic company—

(i) on so much of the total income as consists of,—

(a) royalties received from Government or an Indian concern in pursuance of an agreement made by it with the Government or the Indian concern after the 31st day of March, 1961 but before the 1st day of April, 1976, or

(b) fees for rendering technical services received from Government or an Indian concern in pursuance of an agreement made by it with the Government or the Indian concern after the 29th day of February, 1964 but before the 1st day of April, 1976,

and where such agreement has, in either case, been approved by the Central Government

50 per cent.;

(ii) on the balance, if any, of the total income

40 per cent.;

Surcharge on income-tax

The amount of income-tax computed in accordance with the preceding provisions of this Paragraph, or in section 112, shall, in the case of every company, be increased by a surcharge for purposes of the Union calculated at the rate of five per cent. of such income-tax.

PART IV

[See section 2(10)(c)]

RULES FOR COMPUTATION OF NET AGRICULTURAL INCOME

Rule 1.—Agricultural income of the nature referred to in sub-clause (a) of clause (1A) of section 2 of the Income-tax Act shall be computed as if it were income chargeable to income-tax under that Act under the head "Income from other sources" and the provisions of sections 7 to 59 of that Act shall, so far as may be, apply accordingly:

Provided that sub-section (2) of section 58 shall apply subject to the modification that the reference to section 40A therein shall be construed as not including a reference to sub-sections (3) and (4) of section 40A.

Rule 2.—Agricultural income of the nature referred to in sub-clause (b) or sub-clause (c) of clause (1A) of section 2 of the Income-tax Act [other than income derived from any building required as a dwelling-house by the receiver of the rent or revenue of the cultivator or the receiver of rent-in-kind referred to in the said sub-clause (c)] shall be computed as if it were income chargeable to income-tax under that Act under the head "Profits and gains of business or profession" and the provisions of sections 30, 31, 32, 36, 37, 38, 40, 40A [other

than sub-sections (3) and (4) thereof], 41, 43, 43A, 43B and 43C of the Income-tax Act shall, so far as may be, apply accordingly.

Rule 3.—Agricultural income of the nature referred to in sub-clause (c) of clause (1A) of section 2 of the Income-tax Act, being income derived from any building required as a dwelling-house by the receiver of the rent or revenue or the cultivator or the receiver of rent-in-kind referred to in the said sub-clause (c) shall be computed as if it were income chargeable to income-tax under that Act under the head "Income from house property" and the provisions of sections 23 to 27 of that Act shall, so far as may be, apply accordingly.

Rule 4.—Notwithstanding anything contained in any other provisions of these rules, in a case—

(a) where the assessee derives income from sale of tea grown and manufactured by him in India, such income shall be computed in accordance with rule 8 of the Income-tax Rules, 1962, and sixty per cent. of such income shall be regarded as the agricultural income of the assessee;

(b) where the assessee derives income from sale of centrifuged latex or cenex or latex based crepes (such as pale latex crepe) or brown crepes (such as estate brown crepe, re-milled crepe, smoked blanket crepe or flat bark crepe) of technically specified block rubbers manufactured or processed by him from rubber plants grown by him in India, such income shall be computed in accordance with rule 7A of the Income-tax Rules, 1962, and sixty-five per cent. of such income shall be regarded as the agricultural income of the assessee;

(c) where the assessee derives income from sale of coffee grown and manufactured by him in India, such income shall be computed in accordance with rule 7B of the Income-tax Rules, 1962, and sixty per cent. of such income shall be regarded as the agricultural income of the assessee.

Rule 5.—Where the assessee is a member of an association of persons or a body of individuals (other than a Hindu undivided family, a company or a firm) which in the previous year has either no income chargeable to tax under the Income-tax Act or has total income not exceeding the maximum amount not chargeable to tax in the case of an association of persons or a body of individuals (other than a Hindu undivided family or a company or a firm) but has any agricultural income then, the agricultural income or loss of the association or body shall be computed in accordance with these rules and the share of the assessee in the agricultural income or loss so computed shall be regarded as the agricultural income or loss of the assessee.

Rule 6.—Where the result of the computation for the previous year in respect of any source of agricultural income is a loss, such loss shall be set off against the income of the assessee, if any, for that previous year from any other source of agricultural income:

Provided that where the assessee is a member of an association of persons or a body of individuals and the share of the assessee in the agricultural income of the association or body, as the case may be, is a loss, such loss shall not be set off against any income of the assessee from any other source of agricultural income.

Rule 7.—Any sum payable by the assessee on account of any tax levied by the State Government on the agricultural income shall be deducted in computing the agricultural income.

Rule 8.—(1) Where the assessee has, in the previous year relevant to the assessment year commencing on the 1st day of April, 2002, any agricultural income and the net result of the computation of the agricultural income of the assessee for any one or more of the previous years relevant to the assessment years commencing on the 1st day of April, 1994 or the 1st day of April, 1995 or the 1st day of April, 1996 or the 1st day of April, 1997 or the 1st day of April, 1998 or the 1st day of April, 1999 or the 1st day of April, 2000 or the 1st day of April, 2001, is a loss, then, for the purposes of sub-section (2) of section 2 of this Act,—

(i) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 1994, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 1995 or the 1st day of April, 1996 or the 1st day of April, 1997 or the 1st day of April, 1998 or the 1st day of April, 1999 or the 1st day of April, 2000 or the 1st day of April, 2001,

(ii) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 1995, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 1996 or the 1st day of April, 1997 or the 1st day of April, 1998 or the 1st day of April, 1999 or the 1st day of April, 2000 or the 1st day of April, 2001,

(iii) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 1996, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 1997 or the 1st day of April, 1998 or the 1st day of April, 1999 or the 1st day of April, 2000 or the 1st day of April, 2001,

(iv) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 1997, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 1998 or the 1st day of April, 1999 or the 1st day of April, 2000 or the 1st day of April, 2001,

(v) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 1998, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 1999 or the 1st day of April, 2000 or the 1st day of April, 2001,

(vi) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 1999, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 2000 or the 1st day of April, 2001,

(vii) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 2000, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 2001,

(viii) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 2001,

shall be set off against the agricultural income of the assessee for the previous year relevant to the assessment year commencing on the 1st day of April, 2002.

(2) Where the assessee has, in the previous year relevant to the assessment year commencing on the 1st day of April, 2003 or, if by virtue of any provision of the Income-tax Act, income-tax is to be charged in respect of the income of a period other than that previous year, in such other period, any agricultural income and the net result of the computation of the agricultural income of the assessee for any one or more of the previous years relevant to the assessment years commencing on the 1st day of April, 1995 or the 1st day of April, 1996 or the 1st day of April, 1997 or the 1st day of April, 1998 or the 1st day of April, 1999 or the 1st day of April, 2000 or the 1st day of April, 2001 or the 1st day of April, 2002, is a loss, then, for the purposes of sub-section (9) of section 2 of this Act,—

(i) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 1995, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 1996 or the 1st day of April, 1997 or the

1st day of April, 1998 or the 1st day of April, 1999 or the 1st day of April, 2000 or the 1st day of April, 2001 or the 1st day of April, 2002,

(ii) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 1996, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 1997 or the 1st day of April, 1998 or the 1st day of April, 1999 or the 1st day of April, 2000 or the 1st day of April, 2001 or the 1st day of April, 2002,

(iii) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 1997, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 1998 or the 1st day of April, 1999 or the 1st day of April, 2000 or the 1st day of April, 2001 or the 1st day of April, 2002,

(iv) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 1998, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 1999 or the 1st day of April, 2000 or the 1st day of April, 2001 or the 1st day of April, 2002,

(v) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 1999, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 2000 or the 1st day of April, 2001 or the 1st day of April, 2002,

(vi) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 2000, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 2001 or the 1st day of April, 2002,

(vii) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 2001, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 2002,

(viii) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 2002,

shall be set off against the agricultural income of the assessee for the previous year relevant to the assessment year commencing on the 1st day of April, 2003.

(3) Where any person deriving any agricultural income from any source has been succeeded in such capacity by another person, otherwise than by inheritance, nothing in sub-rule (1) or sub-rule (2) shall entitle any person, other than the person incurring the loss, to have it set off under sub-rule (1) or, as the case may be, sub-rule (2).

(4) Notwithstanding anything contained in this rule, no loss which has not been determined by the Assessing Officer under the provisions of these rules or the rules contained in Part IV of the First Schedule to the Finance Act, 1994 (32 of 1994), or of the First Schedule to the Finance Act, 1995 (22 of 1995), or of the First Schedule to the Finance (No. 2) Act, 1996 (33 of 1996), or of the First Schedule to the Finance Act, 1997 (26 of 1997), or of the First Schedule to the Finance (No. 2) Act, 1998 (21 of 1998), or of the First Schedule to the Finance Act, 1999 (27 of 1999), or of the First Schedule to the Finance Act, 2000 (10 of 2000), or of the First Schedule to the Finance Act, 2001 (14 of 2001), shall be set off under sub-rule (1) or, as the case may be, sub-rule (2).

Rule 9.—Where the net result of the computation made in accordance with these rules is a loss, the loss so computed shall be ignored and the net agricultural income shall be deemed to be *nil*.

Rule 10.—The provisions of the Income-tax Act relating to procedure for assessment (including the provisions of section 288A relating to rounding off of income) shall, with the necessary modifications, apply in relation to the computation of the net agricultural income of the assessee as they apply in relation to the assessment of the total income.

Rule 11.—For the purposes of computing the net agricultural income of the assessee, the Assessing Officer shall have the same powers as he has under the Income-tax Act for the purposes of assessment of the total income.

THE SECOND SCHEDULE

(See section 131)

In the First Schedule to the Customs Tariff Act,—

(1) in Chapter 1, for the entry in column (4) occurring against each of the sub-headings, the entry "30%" shall be substituted;

(2) in Chapter 2, for the entry in column (4) occurring against each of the sub-headings (except sub-headings 0207.13 and 0207.14), the entry "30%" shall be substituted;

(3) in Chapter 3, for the entry in column (4) occurring against each of the sub-headings, the entry "30%" shall be substituted;

(4) in Chapter 4,—

(i) for the entry in column (4) occurring against each of the sub-headings (except sub-headings 0402.10, 0402.21, 0405.10, 0405.20, 0405.90 and 0406.90), the entry "30%" shall be substituted;

(ii) for the entry in column (4) occurring against each of the sub-headings 0405.20 and 0405.90, the entry "40%" shall be substituted;

(5) in Chapter 5,—

(i) for the entry in column (4) occurring against each of the sub-headings (except sub-heading 0507.10), the entry "30%" shall be substituted;

(ii) in sub-heading 0507.10, for the entries in column (4) and column (5), the entries "30%" and "20%" shall respectively be substituted;

(6) in Chapter 6, in sub-headings 0603.10, 0603.90, 0604.10, 0604.91 and 0604.99, for the entry in column (4) occurring against each of them, the entry "30%" shall be substituted;

(7) in Chapter 7,—

(i) for the entries in column (4) and column (5) occurring against each of the sub-headings (except sub-headings 0713.10, 0713.20, 0713.31, 0713.32, 0713.33, 0713.39, 0713.40, 0713.50 and 0713.90), the entries "30%" and "20%" shall respectively be substituted;

(ii) in sub-heading 0713.10, for the entry in column (5), the entry "40%" shall be substituted;

(iii) in sub-headings 0713.20, 0713.31, 0713.32, 0713.33, 0713.39, 0713.40, 0713.50 and 0713.90, for the entries in column (4) and column (5) occurring against each of them, the entries "30%" and "20%" shall respectively be substituted;

(8) in Chapter 8,—

(i) for the entries in column (4) and column (5) occurring against each of the sub-headings (except sub-headings 0801.11, 0801.19, 0801.31, 0802.11, 0802.12, 0802.90, 0805.10, 0805.40, 0805.50, 0806.10, 0806.20, 0808.10, 0808.20, 0809.40 and 0813.20), the entries "30%" and "20%" shall respectively be substituted;

(ii) in sub-heading 0801.31, for the entry in column (4), the entry "30%" shall be substituted;

(iii) in sub-heading 0802.11, for the entry in column (5), the entry "Rs. 30 per kg." shall be substituted;

(iv) in sub-heading 0802.90, for the entry in column (5), the entry "90%" shall be substituted;

(v) in sub-heading 0805.40, for the entry in column (5), the entry "15%" shall be substituted;

(vi) in sub-heading 0806.10, for the entry in column (5), the entry "30%" shall be substituted;

(vii) in sub-heading 0806.20, for the entries in column (4) and column (5) occurring against each of them, the entries "105%" and "95%" shall respectively be substituted;

(viii) in sub-heading 0808.10, for the entry in column (5), the entry "40%" shall be substituted;

(ix) in sub-heading 0808.20, for the entry in column (5), the entry "25%" shall be substituted;

(x) in sub-heading 0813.20, for the entry in column (5), the entry "15%" shall be substituted;

(9) in Chapter 9,—

(i) in sub-headings 0901.11, 0901.12, 0901.21, 0901.22 and 0901.90, for the entries in column (4) and column (5) occurring against each of them, the entries "100%" and "100% less 13 paise per kg." shall respectively be substituted;

(ii) in sub-headings 0902.10, 0902.20, 0902.30 and 0902.40, for the entries in column (4) and column (5) occurring against each of them, the entries "100%" and "100% less 26 paise per kg." shall respectively be substituted;

(iii) in sub-heading 0903.00, for the entries in column (4) and column (5) occurring against each of them, the entries "30%" and "30% less 26 paise per kg." shall respectively be substituted;

(iv) in sub-headings 0904.11 and 0904.12, for the entries in column (4) and column (5) occurring against each of them, the entries "70%" and "62.5%" shall respectively be substituted;

(v) in sub-heading 0904.20, for the entry in column (4), the entry "70%" shall be substituted;

(vi) in sub-heading 0905.00, for the entry in column (4), the entry "30%" shall be substituted;

(vii) in sub-headings 0906.10 and 0906.20, for the entries in column (4) and column (5) occurring against each of them, the entries "30%" and "22.5%" shall respectively be substituted;

(viii) in sub-heading 0907.00, for the entries in column (4) and column (5) occurring against each of them, the entries "70%" and "62.5%" shall respectively be substituted;

(ix) in sub-heading 0908.10, for the entries in column (4) and column (5) occurring against each of them, the entries "30%" and "22.5%" shall respectively be substituted;

(x) in sub-heading 0908.20, for the entry in column (4), the entry "30%" shall be substituted;

(xi) in sub-heading 0908.30, for the entries in column (4) and column (5) occurring against each of them, the entries "70%" and "62.5%" shall respectively be substituted;

(xii) in sub-headings 0909.10, 0909.20, 0909.30, 0909.40, 0909.50, 0910.10, 0910.20, 0910.30, 0910.40, 0910.50, 0910.91 and 0910.99, for the entry in column (4) occurring against each of them, the entry "30%" shall be substituted;

(10) in Chapter 11, for the entry in column (4) occurring against each of the sub-headings (except sub-heading 1107.10), the entry "30%" shall be substituted;

(11) in Chapter 12,—

(i) for the entry in column (4) occurring against each of the sub-headings (except sub-headings 1201.00, 1202.10, 1202.20, 1203.00, 1204.00, 1205.10, 1205.90,

1206.00, 1207.10, 1207.20, 1207.30, 1207.40, 1207.50, 1207.60, 1207.91, 1207.99, 1209.91 and 1209.99), the entry "30%" shall be substituted;

(ii) in sub-headings 1201.00, 1202.10, 1202.20, 1204.00, 1205.10, 1205.90, 1206.00, 1207.10, 1207.20, 1207.30, 1207.40, 1207.50 and 1207.60, for the entries in column (4) and column (5) occurring against each of them, the entries "30%" and "20%" shall respectively be substituted;

(iii) in sub-heading 1207.91, for the entries in column (4) and column (5) occurring against each of them, the entries "70%" and "60%" shall respectively be substituted;

(iv) in sub-heading 1207.99, for the entries in column (4) and column (5) occurring against each of them, the entries "30%" and "20%" shall respectively be substituted;

(12) in Chapter 13,—

(i) for the entry in column (4) occurring against each of the sub-headings (except sub-heading 1301.20), the entry "30%" shall be substituted;

(ii) in sub-heading 1301.20, for the entries in column (4) and column (5) occurring against each of them, the entries "30%" and "20%" shall respectively be substituted;

(13) in Chapter 14, for the entry in column (4) occurring against each of the sub-headings, the entry "30%" shall be substituted;

(14) in Chapter 15,—

(i) in sub-headings 1501.00, 1503.00, 1504.10, 1504.20, 1504.30, 1505.00 and 1506.00, for the entry in column (4) occurring against each of them, the entry "30%" shall be substituted;

(ii) in sub-headings 1507.10 and 1507.90, for the entry in column (5) occurring against each of them, the entry "35%" shall be substituted;

(iii) in sub-headings 1508.10 and 1508.90, for the entry in column (5) occurring against each of them, the entry "90%" shall be substituted;

(iv) in sub-heading 1509.10, for the entry in column (5), the entry "35%" shall be substituted;

(v) in sub-heading 1509.90, for the entry in column (5), the entry "30%" shall be substituted;

(vi) in sub-heading 1510.00, for the entry in column (5), the entry "35%" shall be substituted;

(vii) in sub-headings 1511.10, 1511.90, 1512.11, 1512.19, 1512.21, 1512.29, 1513.11, 1513.19, 1513.21 and 1513.29, for the entry in column (5) occurring against each of them, the entry "90%" shall be substituted;

(viii) in sub-headings 1514.11, 1514.19, 1514.91 and 1514.99, for the entry in column (5) occurring against each of them, the entry "65%" shall be substituted;

(ix) in sub-headings 1515.11, 1515.19, 1515.21, 1515.29, 1515.30, 1515.40, 1515.50 and 1515.90, for the entry in column (5) occurring against each of them, the entry "90%" shall be substituted;

(x) in sub-headings 1516.10, 1516.20, 1517.10, 1517.90, 1518.00, 1520.00, 1521.10, 1521.90 and 1522.00, for the entry in column (4) occurring against each of them, the entry "30%" shall be substituted;

(15) in Chapter 16, for the entry in column (4) occurring against each of the sub-headings (except sub-headings 1601.00 and 1602.32), the entry "30%" shall be substituted;

(16) in Chapter 17, for the entry in column (4) occurring against each of the sub-headings (except sub-headings 1701.11, 1701.12, 1701.91, 1701.99 and 1704.10), the entry "30%" shall be substituted;

(17) in Chapter 18, for the entry in column (4) occurring against each of the sub-headings, the entry "30%" shall be substituted;

(18) in Chapter 19, for the entry in column (4) occurring against each of the sub-headings (except sub-headings 1901.10, 1905.31 and 1905.32), the entry "30%" shall be substituted;

(19) in Chapter 20, for the entry in column (4) occurring against each of the sub-headings (except sub-headings 2004.10, 2009.11, 2009.12 and 2009.19), the entry "30%" shall be substituted;

(20) in Chapter 21,—

(i) for the entry in column (4) occurring against each of the sub-headings (except sub-heading 2106.90), the entry "30%" shall be substituted;

(ii) in sub-heading 2106.90, for the entry in column (4), the entry "160%" shall be substituted;

(21) in Chapter 22,—

(i) in sub-headings 2201.10, 2201.90, 2202.10 and 2202.90, for the entry in column (4) occurring against each of them, the entry "30%" shall be substituted;

(ii) in sub-heading 2207.10, for the entry in column (4), the entry "182%" shall be substituted;

(iii) in sub-heading 2207.20, for the entry in column (4), the entry "30%" shall be substituted;

(iv) in sub-headings 2208.20, 2208.30, 2208.40, 2208.50, 2208.60, 2208.70 and 2208.90, for the entry in column (4) occurring against each of them, the entry "182%" shall be substituted;

(v) in sub-heading 2209.00, for the entry in column (4), the entry "30%" shall be substituted;

(22) in Chapter 23, for the entry in column (4) occurring against each of the sub-headings, the entry "30%" shall be substituted;

(23) in Chapter 24, for the entry in column (4) occurring against each of the sub-headings, the entry "30%" shall be substituted;

(24) in Chapter 25,—

(i) in sub-headings 2504.10 and 2504.90, for the entries in column (4) and column (5) occurring against each of them, the entries "30%" and "20%" shall respectively be substituted;

(ii) in sub-headings 2515.11, 2515.12, 2515.20, 2516.11, 2516.12, 2516.21, 2516.22, 2516.90, 2519.10, 2519.90, 2523.10, 2523.21, 2523.29, 2523.30 and 2523.90, for the entry in column (4) occurring against each of them, the entry "30%" shall be substituted;

(25) in Chapter 26, in sub-headings 2620.11, 2620.19 and 2620.30, for the entry in column (4) occurring against each of them, the entry "30%" shall be substituted;

(26) in Chapter 27,—

(i) in sub-headings 2705.00, 2706.00, 2707.10, 2707.20, 2707.30, 2707.50, 2707.91, 2707.99, 2708.10 and 2708.20, for the entry in column (4) occurring against each of them, the entry "30%" shall be substituted;

(ii) in sub-heading 2709.00, for the entry in column (4), the entry "10%" shall be substituted;

(iii) in sub-headings 2710.11, 2710.19, 2710.91, 2710.99, 2712.10, 2712.20, 2712.90, 2713.11, 2713.12, 2713.20, 2713.90 and 2715.00, for the entry in column (4) occurring against each of them, the entry "20%" shall be substituted;

(27) in Chapter 28, for the entry in column (4) occurring against each of the sub-headings (except sub-headings 2801.20, 2814.10, 2814.20 and 2845.10), the entry "30%" shall be substituted;

(28) in Chapter 29,—

(i) for the entry in column (4) occurring against each of the sub-headings (except sub-headings 2901.10, 2901.21, 2901.22, 2901.23, 2901.24, 2901.29, 2902.11, 2902.19, 2902.20, 2902.30, 2902.41, 2902.42, 2902.43, 2902.44, 2902.50, 2902.60, 2902.70, 2902.90, 2903.15, 2903.21, 2905.11, 2905.31, 2907.11, 2910.30, 2915.21, 2917.12, 2917.36, 2917.37, 2918.12, 2926.10, 2933.21, 2933.71, 2936.10, 2936.21, 2936.22, 2936.23, 2936.24, 2936.25, 2936.26, 2936.27, 2936.28, 2936.29, 2936.90, 2937.11, 2937.12, 2937.19, 2937.21, 2937.22, 2937.23, 2937.29, 2937.31, 2937.39, 2937.40, 2937.50, 2937.90, 2939.41, 2939.42, 2939.43, 2939.49, 2939.51, 2939.59, 2941.10, 2941.20, 2941.30, 2941.40, 2941.50 and 2941.90), the entry "30%" shall be substituted;

(ii) in sub-heading 2902.43, for the entry in column (4), the entry "10%" shall be substituted;

(iii) in sub-headings 2936.10, 2936.21, 2936.22, 2936.23, 2936.24, 2936.25, 2936.26, 2936.27, 2936.28, 2936.29 and 2936.90, for the entries in column (4) and column (5) occurring against each of them, the entries "30%" and "24%" shall respectively be substituted;

(iv) in sub-headings 2937.11, 2937.12, 2937.19, 2937.21, 2937.22, 2937.23, 2937.29, 2937.31, 2937.39, 2937.40, 2937.50, 2937.90, 2939.41, 2939.42, 2939.43, 2939.49, 2939.51 and 2939.59, for the entries in column (4) and column (5) occurring against each of them, the entries "30%" and "20%" shall respectively be substituted;

(v) in sub-headings 2941.10, 2941.20, 2941.30, 2941.40, 2941.50 and 2941.90, for the entries in column (4) and column (5) occurring against each of them, the entries "30%" and "24%" shall respectively be substituted;

(29) in Chapter 30,—

(i) for the entries in column (4) and column (5) occurring against each of the sub-headings (except sub-headings 3005.10, 3005.90, 3006.10, 3006.20, 3006.30, 3006.40, 3006.50, 3006.60, 3006.70 and 3006.80), the entries "30%" and "20%" shall respectively be substituted;

(ii) in sub-headings 3005.10, 3005.90, 3006.10, 3006.20, 3006.30, 3006.40, 3006.50, 3006.70 and 3006.80, for the entry in column (4), the entry "30%" shall be substituted;

(30) in Chapter 31, for the entry in column (4) occurring against each of the sub-headings (except sub-headings 3102.21, 3102.50, 3104.30, 3105.20, 3105.30, 3105.40, 3105.51, 3105.59, 3105.60 and 3105.90), the entry "30%" shall be substituted;

(31) in Chapter 32, for the entry in column (4) occurring against each of the sub-headings (except sub-headings 3201.10, 3201.20 and 3201.90), the entry "30%" shall be substituted;

(32) in Chapter 33,—

(i) for the entry in column (4) occurring against each of the sub-headings (except sub-heading 3302.10), the entry "30%" shall be substituted;

(ii) in sub-heading 3302.10, for the entry in column (4), the entry "160%" shall be substituted;

(33) in Chapter 34,—

(i) for the entry in column (4) occurring against each of the sub-headings (except sub-headings 3402.11, 3402.12, 3402.13 and 3402.19), the entry "30%" shall be substituted;

(ii) in sub-headings 3402.11, 3402.12, 3402.13 and 3402.19, for the entries in column (4) and column (5) occurring against each of them, the entries "30%" and "20%" shall respectively be substituted;

(34) in Chapter 35, for the entry in column (4) occurring against each of the sub-headings, the entry "30%" shall be substituted;

(35) in Chapter 36, for the entry in column (4) occurring against each of the sub-headings, the entry "30%" shall be substituted;

(36) in Chapter 37, in sub-headings 3702.32, 3702.39, 3702.42, 3702.43, 3702.44, 3707.10 and 3707.90, for the entry in column (4) occurring against each of them, the entry "30%" shall be substituted;

(37) in Chapter 38,—

(i) for the entry in column (4) occurring against each of the sub-headings (except sub-headings 3801.10, 3802.10, 3812.10, 3815.11, 3815.12, 3815.19, 3815.90, 3818.00 and 3823.70), the entry "30%" shall be substituted;

(ii) in sub-headings 3801.10, 3802.10 and 3812.10, for the entries in column (4) and column (5) occurring against each of them, the entries "30%" and "20%" shall respectively be substituted;

(38) in Chapter 39, for the entry in column (4) occurring against each of the sub-headings, the entry "30%" shall be substituted;

(39) in Chapter 40,—

(i) for the entry in column (4) occurring against each of the sub-headings (except sub-headings 4001.10, 4001.21, 4001.22, 4001.29 and 4011.30), the entry "30%" shall be substituted;

(ii) in sub-heading 4001.10, for the entry in column (4), the entry "70%" shall be substituted;

(40) in Chapter 42, for the entry in column (4) occurring against each of the sub-headings, the entry "30%" shall be substituted;

(41) in Chapter 43, in sub-headings 4303.10, 4303.90 and 4304.00, for the entry in column (4) occurring against each of them, the entry "30%" shall be substituted;

(42) in Chapter 44, for the entry in column (4) occurring against each of the sub-headings (except sub-headings 4401.10, 4401.21, 4401.22, 4401.30, 4402.00, 4403.10, 4403.20, 4403.41, 4403.49, 4403.91, 4403.92, 4403.99, 4404.10, 4404.20, 4405.00, 4406.10, 4406.90, 4407.10, 4407.24, 4407.25, 4407.26, 4407.29, 4407.91, 4407.92 and 4407.99), the entry "30%" shall be substituted;

(43) in Chapter 45, for the entry in column (4) occurring against each of the sub-headings, the entry "30%" shall be substituted;

(44) in Chapter 46, for the entry in column (4) occurring against each of the sub-headings, the entry "30%" shall be substituted;

(45) in Chapter 48, for the entry in column (4) occurring against each of the sub-headings (except sub-heading 4801.00), the entry "30%" shall be substituted;

(46) in Chapter 50, for the entry in column (4) occurring against each of the sub-headings (except sub-headings 5003.10 and 5003.90), the entry "30%" shall be substituted;

(47) in Chapter 51,—

(i) in sub-headings 5101.21, 5101.30, 5109.10, 5109.90 and 5110.00, for the entry in column (4) occurring against each of them, the entry "30%" shall be substituted;

(ii) in sub-heading 5113.00, for the entry in column (4), the entry "30% or Rs. 60 per sq.mtr., whichever is higher" shall be substituted;

(48) in Chapter 52,—

(i) in sub-headings 5203.00, 5207.90, 5208.11, 5208.12, 5208.13, 5208.19, 5208.21, 5208.22, 5208.23, 5208.29, 5208.31, 5208.32 and 5208.33, for the entry in column (4) occurring against each of them, the entry "30%" shall be substituted;

(ii) in sub-heading 5208.39, for the entry in column (4), the entry "30% or Rs. 150 per kg., whichever is higher" shall be substituted;

(iii) in sub-heading 5208.43, for the entry in column (4), the entry "30%" shall be substituted;

(iv) in sub-heading 5208.49, for the entry in column (4), the entry "30% or Rs. 200 per kg., whichever is higher" shall be substituted;

(v) in sub-headings 5209.11, 5209.12, 5209.19, 5209.21, 5209.22 and 5209.29, for the entry in column (4) occurring against each of them, the entry "30%" shall be substituted;

(vi) in sub-headings 5209.31, 5209.32 and 5209.39, for the entry in column (4) occurring against each of them, the entry "30% or Rs. 150 per kg., whichever is higher" shall be substituted;

(vii) in sub-heading 5209.41, for the entry in column (4), the entry "30% or Rs. 32 per sq. mtr., whichever is higher" shall be substituted;

(viii) in sub-heading 5209.43, for the entry in column (4), the entry "30% or Rs. 30 per sq. mtr., whichever is higher" shall be substituted;

(ix) in sub-heading 5209.49, for the entry in column (4), the entry "30% or Rs. 150 per kg., whichever is higher" shall be substituted;

(x) in sub-headings 5210.11, 5210.12, 5210.19, 5210.21, 5210.22, 5210.29, 5210.31 and 5210.32, for the entry in column (4) occurring against each of them, the entry "30%" shall be substituted;

(xi) in sub-heading 5210.39, for the entry in column (4), the entry "30% or Rs. 150 per kg., whichever is higher" shall be substituted;

(xii) in sub-heading 5210.42, for the entry in column (4), the entry "30% or Rs. 25 per sq. mtr., whichever is higher" shall be substituted;

(xiii) in sub-heading 5210.49, for the entry in column (4), the entry "30% or Rs. 185 per kg., whichever is higher" shall be substituted;

(xiv) in sub-headings 5211.11, 5211.12, 5211.19, 5211.21, 5211.22 and 5211.29, for the entry in column (4) occurring against each of them, the entry "30%" shall be substituted;

(xv) in sub-headings 5211.31, 5211.32 and 5211.39, for the entry in column (4) occurring against each of them, the entry "30% or Rs. 150 per kg., whichever is higher" shall be substituted;

(xvi) in sub-heading 5211.41, for the entry in column (4), the entry "30% or Rs. 44 per sq. mtr., whichever is higher" shall be substituted;

(xvii) in sub-heading 5211.43, for the entry in column (4), the entry "30% or Rs. 40 per sq. mtr., whichever is higher" shall be substituted;

(xviii) in sub-heading 5211.49, for the entry in column (4), the entry "30% or Rs. 150 per kg., whichever is higher" shall be substituted;

(xix) in sub-headings 5212.11, 5212.12, 5212.13 and 5212.14, for the entry in column (4) occurring against each of them, the entry "30%" shall be substituted;

(xx) in sub-heading 5212.15, for the entry in column (4), the entry "30% or Rs. 165 per kg., whichever is higher" shall be substituted;

(xxi) in sub-headings 5212.21, 5212.22 and 5212.23, for the entry in column (4) occurring against each of them, the entry "30%" shall be substituted;

(xxii) in sub-heading 5212.25, for the entry in column (4), the entry "30% or Rs. 165 per kg., whichever is higher" shall be substituted;

(49) in Chapter 53, for the entry in column (4) occurring against each of the sub-headings, the entry "30%" shall be substituted;

(50) in Chapter 54, in sub-headings 5408.10 and 5408.21, for the entry in column (4) occurring against each of them, the entry "30%" shall be substituted;

(51) in Chapter 55,—

(i) in sub-headings 5505.10, 5505.20, 5512.11, 5512.21, 5512.91, 5513.11, 5513.12, 5513.13 and 5513.19, for the entry in column (4) occurring against each of them, the entry "30%" shall be substituted;

(ii) in sub-headings 5513.21 and 5513.22, for the entry in column (4) occurring against each of them, the entry "30% or Rs. 150 per kg., whichever is higher" shall be substituted;

(iii) in sub-heading 5513.23, for the entry in column (4), the entry "30% or Rs. 125 per kg. or Rs. 25 per sq. mtr., whichever is highest" shall be substituted;

(iv) in sub-heading 5513.29, for the entry in column (4), the entry "30% or Rs. 185 per kg., whichever is higher" shall be substituted;

(v) in sub-heading 5513.32, for the entry in column (4), the entry "30% or Rs. 170 per kg., whichever is higher" shall be substituted;

(vi) in sub-heading 5513.33, for the entry in column (4), the entry "30% or Rs. 22 per sq. mtr., whichever is higher" shall be substituted;

(vii) in sub-heading 5513.39, for the entry in column (4), the entry "30% or Rs. 125 per kg. or Rs. 30 per sq. mtr., whichever is highest" shall be substituted;

(viii) in sub-heading 5513.42, for the entry in column (4), the entry "30% or Rs. 12 per sq. mtr., whichever is higher" shall be substituted;

(ix) in sub-heading 5513.43, for the entry in column (4), the entry "30% or Rs. 20 per sq. mtr., whichever is higher" shall be substituted;

(x) in sub-heading 5513.49, for the entry in column (4), the entry "30% or Rs. 185 per kg., whichever is higher" shall be substituted;

(xi) in sub-headings 5514.11, 5514.12, 5514.13 and 5514.19, for the entry in column (4) occurring against each of them, the entry "30%" shall be substituted;

(xii) in sub-heading 5514.21, for the entry in column (4), the entry "30% or Rs. 100 per kg., or Rs. 30 per sq. mtr., whichever is highest" shall be substituted;

(xiii) in sub-heading 5514.22, for the entry in column (4), the entry "30% or Rs. 140 per kg., whichever is higher" shall be substituted;

(xiv) in sub-heading 5514.23, for the entry in column (4), the entry "30% or Rs. 160 per kg., whichever is higher" shall be substituted;

(xv) in sub-heading 5514.29, for the entry in column (4), the entry "30% or Rs. 170 per kg., whichever is higher" shall be substituted;

(xvi) in sub-heading 5514.31, for the entry in column (4), the entry "30% or Rs. 64 per sq. mtr., whichever is higher" shall be substituted;

(xvii) in sub-heading 5514.33, for the entry in column (4), the entry "30% or Rs. 180 per kg., whichever is higher" shall be substituted;

(xviii) in sub-heading 5514.42, for the entry in column (4), the entry "30% or Rs. 140 per kg., whichever is higher" shall be substituted;

(xix) in sub-heading 5514.43, for the entry in column (4), the entry "30% or Rs. 31 per sq. mtr., whichever is higher" shall be substituted;

(xx) in sub-heading 5514.49, for the entry in column (4), the entry "30% or Rs. 160 per kg., whichever is higher" shall be substituted;

(xxi) in sub-heading 5515.12, for the entry in column (4), the entry "30% or Rs. 95 per kg., whichever is higher" shall be substituted;

(xxii) in sub-heading 5515.13, for the entry in column (4), the entry "30% or Rs. 75 per sq. mtr., whichever is higher" shall be substituted;

(xxiii) in sub-heading 5515.21, for the entry in column (4), the entry "30% or Rs. 79 per sq. mtr., whichever is higher" shall be substituted;

(xxiv) in sub-heading 5515.22, for the entry in column (4), the entry "30% or Rs. 140 per kg., whichever is higher" shall be substituted;

(xxv) in sub-heading 5515.91, for the entry in column (4), the entry "30% or Rs. 57 per sq. mtr., whichever is higher" shall be substituted;

(xxvi) in sub-heading 5515.92, for the entry in column (4), the entry "30% or Rs. 55 per sq. mtr., whichever is higher" shall be substituted;

(xxvii) in sub-heading 5516.11, for the entry in column (4), the entry "30%" shall be substituted;

(xxviii) in sub-heading 5516.12, for the entry in column (4), the entry "30% or Rs. 35 per sq. mtr., whichever is higher" shall be substituted;

(xxix) in sub-heading 5516.13, for the entry in column (4), the entry "30% or Rs. 40 per sq. mtr., whichever is higher" shall be substituted;

(xxx) in sub-heading 5516.21, for the entry in column (4), the entry "30%" shall be substituted;

(xxxi) in sub-headings 5516.22 and 5516.23, for the entry in column (4) occurring against each of them, the entry "30% or Rs. 150 per kg., whichever is higher" shall be substituted;

(xxxii) in sub-headings 5516.31, 5516.32, 5516.33, 5516.34, 5516.41, 5516.42, 5516.91 and 5516.92, for the entry in column (4) occurring against each of them, the entry "30%" shall be substituted;

(xxxiii) in sub-heading 5516.94, for the entry in column (4), the entry "30% or Rs. 40 per sq. mtr., whichever is higher" shall be substituted;

(52) in Chapter 56, in sub-headings 5601.10, 5608.11, 5608.19, 5608.90 and 5609.00, for the entry in column (4) occurring against each of them, the entry "30%" shall be substituted;

(53) in Chapter 57,—

(i) in sub-headings 5701.10, 5701.90, 5702.10, 5702.20 and 5702.31, for the entry in column (4) occurring against each of them, the entry "30%" shall be substituted;

(ii) in sub-heading 5702.32, for the entry in column (4), the entry "30% or Rs. 105 per sq. mtr., whichever is higher" shall be substituted;

(iii) in sub-headings 5702.39 and 5702.41, for the entry in column (4) occurring against each of them, the entry "30%" shall be substituted;

(iv) in sub-heading 5702.42, for the entry in column (4), the entry "30% or Rs. 80 per sq. mtr., whichever is higher" shall be substituted;

(v) in sub-headings 5702.49 and 5702.51, for the entry in column (4) occurring against each of them, the entry "30%" shall be substituted;

(vi) in sub-heading 5702.52, for the entry in column (4), the entry "30% or Rs. 105 per sq. mtr., whichever is higher" shall be substituted;

(vii) in sub-headings 5702.59 and 5702.91, for the entry in column (4) occurring against each of them, the entry "30%" shall be substituted;

(viii) in sub-heading 5702.92, for the entry in column (4), the entry "30% or Rs. 110 per sq. mtr., whichever is higher" shall be substituted;

(ix) in sub-headings 5702.99 and 5703.10, for the entry in column (4) occurring against each of them, the entry "30%" shall be substituted;

(x) in sub-heading 5703.20, for the entry in column (4), the entry "30% or Rs. 70 per sq. mtr., whichever is higher" shall be substituted;

(xi) in sub-heading 5703.30, for the entry in column (4), the entry "30% or Rs. 55 per sq. mtr., whichever is higher" shall be substituted;

(xii) in sub-headings 5703.90 and 5704.10, for the entry in column (4) occurring against each of them, the entry "30%" shall be substituted;

(xiii) in sub-heading 5704.90, for the entry in column (4), the entry "30% or Rs. 35 per sq. mtr., whichever is higher" shall be substituted;

(xiv) in sub-heading 5705.00, for the entry in column (4), the entry "30%" shall be substituted;

(54) in Chapter 58,—

(i) in sub-heading 5801.10, for the entry in column (4), the entry "30% or Rs. 210 per sq. mtr., whichever is higher" shall be substituted;

(ii) in sub-heading 5801.21, for the entry in column (4), the entry "30% or Rs. 80 per sq. mtr., whichever is higher" shall be substituted;

(iii) in sub-heading 5801.22, for the entry in column (4), the entry "30% or Rs. 75 per sq. mtr., whichever is higher" shall be substituted;

(iv) in sub-heading 5801.23, for the entry in column (4), the entry "30% or Rs. 80 per sq. mtr., whichever is higher" shall be substituted;

(v) in sub-heading 5801.24, for the entry in column (4), the entry "30% or Rs. 135 per sq. mtr., whichever is higher" shall be substituted;

(vi) in sub-heading 5801.25, for the entry in column (4), the entry "30% or Rs. 120 per sq. mtr., whichever is higher" shall be substituted;

(vii) in sub-heading 5801.26, for the entry in column (4), the entry "30% or Rs. 180 per sq. mtr., whichever is higher" shall be substituted;

(viii) in sub-heading 5801.31, for the entry in column (4), the entry "30% or Rs. 75 per sq. mtr., whichever is higher" shall be substituted;

(ix) in sub-heading 5801.32, for the entry in column (4), the entry "30% or Rs. 180 per sq. mtr., whichever is higher" shall be substituted;

(x) in sub-heading 5801.33, for the entry in column (4), the entry "30% or Rs. 150 per sq. mtr., whichever is higher" shall be substituted;

(xi) in sub-heading 5801.34, for the entry in column (4), the entry "30% or Rs. 140 per sq. mtr., whichever is higher" shall be substituted;

(xii) in sub-heading 5801.36, for the entry in column (4), the entry "30% or Rs. 130 per sq. mtr., whichever is higher" shall be substituted;

(xiii) in sub-heading 5801.90, for the entry in column (4), the entry "30% or Rs. 35 per sq. mtr., whichever is higher" shall be substituted;

(xiv) in sub-heading 5802.20, for the entry in column (4), the entry "30%" shall be substituted;

(xv) in sub-heading 5802.30, for the entry in column (4), the entry "30% or Rs. 150 per kg., whichever is higher" shall be substituted;

(xvi) in sub-headings 5803.10 and 5803.90, for the entry in column (4) occurring against each of them, the entry "30%" shall be substituted;

(xvii) in sub-headings 5804.10, 5804.21, 5804.29 and 5804.30, for the entry in column (4) occurring against each of them, the entry "30% or Rs. 200 per kg., whichever is higher" shall be substituted;

(xviii) in sub-headings 5805.00, 5806.10, 5806.20, 5806.31, 5806.39, 5806.40 and 5808.10, for the entry in column (4) occurring against each of them, the entry "30%" shall be substituted;

(xix) in sub-heading 5810.10, for the entry in column (4), the entry "30% or Rs. 200 per kg., whichever is higher" shall be substituted;

(xx) in sub-headings 5810.91, 5810.92, 5810.99 and 5811.00, for the entry in column (4) occurring against each of them, the entry "30%" shall be substituted;

(55) in Chapter 59, in sub-headings 5904.10, 5904.90, 5905.00, 5906.10, 5906.91, 5906.99, 5907.00, 5908.00, 5909.00, 5911.20, 5911.31, 5911.32, 5911.40 and 5911.90, for the entry in column (4) occurring against each of them, the entry "30%" shall be substituted;

(56) in Chapter 60, for the entry in column (4) occurring against each of the sub-headings (except sub-headings 6001.92, 6005.21, 6005.22, 6005.23, 6005.24, 6005.31, 6005.32, 6005.33, 6005.34, 6005.41, 6005.42, 6005.43 and 6005.44), the entry "30%" shall be substituted;

(57) in Chapter 61,—

(i) in sub-heading 6101.10, for the entry in column (4), the entry "30% or Rs. 700 per piece, whichever is higher" shall be substituted;

(ii) in sub-heading 6101.20, for the entry in column (4), the entry "30% or Rs. 540 per piece, whichever is higher" shall be substituted;

(iii) in sub-heading 6101.30, for the entry in column (4), the entry "30% or Rs. 530 per piece, whichever is higher" shall be substituted;

(iv) in sub-heading 6101.90, for the entry in column (4), the entry "30%" shall be substituted;

(v) in sub-heading 6102.10, for the entry in column (4), the entry "30% or Rs. 595 per piece, whichever is higher" shall be substituted;

(vi) in sub-heading 6102.20, for the entry in column (4), the entry "30% or Rs. 425 per piece, whichever is higher" shall be substituted;

(vii) in sub-heading 6102.30, for the entry in column (4), the entry "30% or Rs. 475 per piece, whichever is higher" shall be substituted;

(viii) in sub-headings 6102.90, 6103.11, 6103.12, 6103.19, 6103.21, 6103.22, 6103.23, 6103.29, 6103.31, 6103.32, 6103.33, 6103.39, 6103.41, 6103.42, 6103.43, 6103.49, 6104.11, 6104.12 and 6104.13, for the entry in column (4) occurring against each of them, the entry "30%" shall be substituted;

(ix) in sub-heading 6104.19, for the entry in column (4), the entry "30% or Rs. 460 per piece, whichever is higher" shall be substituted;

(x) in sub-headings 6104.21, 6104.22, 6104.23, 6104.29, 6104.31, 6104.32, 6104.33 and 6104.39, for the entry in column (4) occurring against each of them, the entry "30%" shall be substituted;

(xi) in sub-heading 6104.41, for the entry in column (4), the entry "30% or Rs. 255 per piece, whichever is higher" shall be substituted;

(xii) in sub-heading 6104.42, for the entry in column (4), the entry "30%" shall be substituted;

(xiii) in sub-headings 6104.43 and 6104.44, for the entry in column (4) occurring against each of them, the entry "30% or Rs. 255 per piece, whichever is higher" shall be substituted;

(xiv) in sub-heading 6104.49, for the entry in column (4), the entry "30% or Rs. 220 per piece, whichever is higher" shall be substituted;

(xv) in sub-headings 6104.51, 6104.52, 6104.53 and 6104.59, for the entry in column (4) occurring against each of them, the entry "30% or Rs. 110 per piece, whichever is higher" shall be substituted;

(xvi) in sub-heading 6104.61, for the entry in column (4), the entry "30%" shall be substituted;

(xvii) in sub-headings 6104.62 and 6104.63, for the entry in column (4) occurring against each of them, the entry "30% or Rs. 98 per piece, whichever is higher" shall be substituted;

(xviii) in sub-heading 6104.69, for the entry in column (4), the entry "30%" shall be substituted;

(xix) in sub-headings 6105.10 and 6105.20, for the entry in column (4) occurring against each of them, the entry "30% or Rs. 83 per piece, whichever is higher" shall be substituted;

(xx) in sub-heading 6105.90, for the entry in column (4), the entry "30% or Rs. 90 per piece, whichever is higher" shall be substituted;

(xxi) in sub-heading 6106.10, for the entry in column (4), the entry "30% or Rs. 90 per piece, whichever is higher" shall be substituted;

(xxii) in sub-heading 6106.20, for the entry in column (4), the entry "30% or Rs. 25 per piece, whichever is higher" shall be substituted;

(xxiii) in sub-heading 6106.90, for the entry in column (4), the entry "30% or Rs. 135 per piece, whichever is higher" shall be substituted;

(xxiv) in sub-heading 6107.11, for the entry in column (4), the entry "30% or Rs. 24 per piece, whichever is higher" shall be substituted;

(xxv) in sub-heading 6107.12, for the entry in column (4), the entry "30% or Rs. 30 per piece, whichever is higher" shall be substituted;

(xxvi) in sub-headings 6107.19, 6107.21, 6107.22, 6107.29, 6107.91, 6107.92, 6107.99, 6108.11 and 6108.19, for the entry in column (4) occurring against each of them, the entry "30%" shall be substituted;

(xxvii) in sub-headings 6108.21 and 6108.22, for the entry in column (4)

occurring against each of them, the entry "30% or Rs. 25 per piece, whichever is higher" shall be substituted;

(xxviii) in sub-headings 6108.29, 6108.31, 6108.32 and 6108.39, for the entry in column (4) occurring against each of them, the entry "30%" shall be substituted;

(xxix) in sub-heading 6108.91, for the entry in column (4), the entry "30% or Rs. 65 per piece, whichever is higher" shall be substituted;

(xxx) in sub-heading 6108.92, for the entry in column (4), the entry "30% or Rs. 60 per piece, whichever is higher" shall be substituted;

(xxxi) in sub-heading 6108.99, for the entry in column (4), the entry "30%" shall be substituted;

(xxxii) in sub-heading 6109.10, for the entry in column (4), the entry "30% or Rs. 45 per piece, whichever is higher" shall be substituted;

(xxxiii) in sub-heading 6109.90, for the entry in column (4), the entry "30% or Rs. 50 per piece, whichever is higher" shall be substituted;

(xxxiv) in sub-headings 6110.11, 6110.12 and 6110.19, for the entry in column (4) occurring against each of them, the entry "30% or Rs. 275 per piece, whichever is higher" shall be substituted;

(xxxv) in sub-heading 6110.20, for the entry in column (4), the entry "30% or Rs. 85 per piece, whichever is higher" shall be substituted;

(xxxvi) in sub-heading 6110.30, for the entry in column (4), the entry "30% or Rs. 110 per piece, whichever is higher" shall be substituted;

(xxxvii) in sub-heading 6110.90, for the entry in column (4), the entry "30% or Rs. 105 per piece, whichever is higher" shall be substituted;

(xxxviii) in sub-headings 6111.10, 6111.20, 6111.30, 6111.90, 6112.11, 6112.12, 6112.19, 6112.20, 6112.31, 6112.39, 6112.41, 6112.49, 6113.00, 6114.10, 6114.20, 6114.30, 6114.90, 6115.11, 6115.12, 6115.19, 6115.20, 6115.91, 6115.92, 6115.93, 6115.99, 6116.10, 6116.91, 6116.92, 6116.93, 6116.99, 6117.10, 6117.20, 6117.80 and 6117.90, for the entry in column (4) occurring against each of them, the entry "30%" shall be substituted;

(58) in Chapter 62,—

(i) in sub-headings 6201.11 and 6201.12, for the entry in column (4) occurring against each of them, the entry "30% or Rs. 385 per piece, whichever is higher" shall be substituted;

(ii) in sub-heading 6201.13, for the entry in column (4), the entry "30% or Rs. 320 per piece, whichever is higher" shall be substituted;

(iii) in sub-heading 6201.19, for the entry in column (4), the entry "30%" shall be substituted;

(iv) in sub-heading 6201.91, for the entry in column (4), the entry "30% or Rs. 220 per piece, whichever is higher" shall be substituted;

(v) in sub-heading 6201.92, for the entry in column (4), the entry "30% or Rs. 210 per piece, whichever is higher" shall be substituted;

(vi) in sub-heading 6201.93, for the entry in column (4), the entry "30% or Rs. 180 per piece, whichever is higher" shall be substituted;

(vii) in sub-heading 6201.99, for the entry in column (4), the entry "30%" shall be substituted;

(viii) in sub-heading 6202.11, for the entry in column (4), the entry "30% or

Rs. 385 per piece, whichever is higher" shall be substituted;

(ix) in sub-heading 6202.12, for the entry in column (4), the entry "30% or Rs. 210 per piece, whichever is higher" shall be substituted;

(x) in sub-heading 6202.13, for the entry in column (4), the entry "30% or Rs. 385 per piece, whichever is higher" shall be substituted;

(xi) in sub-heading 6202.19, for the entry in column (4), the entry "30% shall be substituted;

(xii) in sub-heading 6202.91, for the entry in column (4), the entry "30% or Rs. 220 per piece, whichever is higher" shall be substituted;

(xiii) in sub-heading 6202.92, for the entry in column (4), the entry "30% or Rs. 160 per piece, whichever is higher" shall be substituted;

(xiv) in sub-heading 6202.93, for the entry in column (4), the entry "30% or Rs. 220 per piece, whichever is higher" shall be substituted;

(xv) in sub-heading 6202.99, for the entry in column (4), the entry "30% shall be substituted;

(xvi) in sub-heading 6203.11, for the entry in column (4), the entry "30% or Rs. 1100 per piece, whichever is higher" shall be substituted;

(xvii) in sub-heading 6203.12, for the entry in column (4), the entry "30% or Rs. 720 per piece, whichever is higher" shall be substituted;

(xviii) in sub-heading 6203.19, for the entry in column (4), the entry "30% or Rs. 1110 per piece, whichever is higher" shall be substituted;

(xix) in sub-headings 6203.21, 6203.22, 6203.23 and 6203.29, for the entry in column (4) occurring against each of them, the entry "30% or Rs. 145 per piece, whichever is higher" shall be substituted;

(xx) in sub-heading 6203.31, for the entry in column (4), the entry "30% or Rs. 815 per piece, whichever is higher" shall be substituted;

(xxi) in sub-heading 6203.32, for the entry in column (4) occurring against each of them, the entry "30% or Rs. 440 per piece, whichever is higher" shall be substituted;

(xxii) in sub-heading 6203.33, for the entry in column (4), the entry "30% or Rs. 320 per piece, whichever is higher" shall be substituted;

(xxiii) in sub-heading 6203.39, for the entry in column (4), the entry "30% or Rs. 755 per piece, whichever is higher" shall be substituted;

(xxiv) in sub-heading 6203.41, for the entry in column (4), the entry "30% or Rs. 285 per piece, whichever is higher" shall be substituted;

(xxv) in sub-heading 6203.42, for the entry in column (4), the entry "30% or Rs. 135 per piece, whichever is higher" shall be substituted;

(xxvi) in sub-headings 6203.43 and 6203.49, for the entry in column (4) occurring against each of them, the entry "30% or Rs. 110 per piece, whichever is higher" shall be substituted;

(xxvii) in sub-heading 6204.11, for the entry in column (4), the entry "30% or Rs. 550 per piece, whichever is higher" shall be substituted;

(xxviii) in sub-heading 6204.12, for the entry in column (4), the entry "30% shall be substituted;

(xxix) in sub-heading 6204.13, for the entry in column (4), the entry "30% or Rs. 550 per piece, whichever is higher" shall be substituted;

(xxx) in sub-heading 6204.19, for the entry in column (4), the entry "30% or Rs. 500 per piece, whichever is higher" shall be substituted;

(xxxi) in sub-headings 6204.21, 6204.22, 6204.23 and 6204.29, for the entry in column (4) occurring against each of them, the entry "30%" shall be substituted;

(xxxii) in sub-heading 6204.31, for the entry in column (4), the entry "30% or Rs. 370 per piece, whichever is higher" shall be substituted;

(xxxiii) in sub-heading 6204.32, for the entry in column (4), the entry "30% or Rs. 650 per piece, whichever is higher" shall be substituted;

(xxxiv) in sub-heading 6204.33, for the entry in column (4), the entry "30% or Rs. 390 per piece, whichever is higher" shall be substituted;

(xxxv) in sub-heading 6204.39, for the entry in column (4), the entry "30% or Rs. 350 per piece, whichever is higher" shall be substituted;

(xxxvi) in sub-heading 6204.41, for the entry in column (4), the entry "30% or Rs. 145 per piece, whichever is higher" shall be substituted;

(xxxvii) in sub-heading 6204.42, for the entry in column (4), the entry "30% or Rs. 116 per piece, whichever is higher" shall be substituted;

(xxxviii) in sub-headings 6204.43, 6204.44 and 6204.49, for the entry in column (4) occurring against each of them, the entry "30% or Rs. 145 per piece, whichever is higher" shall be substituted;

(xxxix) in sub-heading 6204.51, for the entry in column (4), the entry "30% or Rs. 485 per piece, whichever is higher" shall be substituted;

(xl) in sub-headings 6204.52, 6204.53 and 6204.59, for the entry in column (4) occurring against each of them, the entry "30%" shall be substituted;

(xli) in sub-heading 6204.61, for the entry in column (4), the entry "30% or Rs. 285 per piece, whichever is higher" shall be substituted;

(xlii) in sub-heading 6204.62, for the entry in column (4), the entry "30% or Rs. 135 per piece, whichever is higher" shall be substituted;

(xliii) in sub-heading 6204.63, for the entry in column (4), the entry "30%" shall be substituted;

(xliv) in sub-heading 6204.69, for the entry in column (4), the entry "30% or Rs. 135 per piece, whichever is higher" shall be substituted;

(xlv) in sub-heading 6205.10, for the entry in column (4), the entry "30% or Rs. 200 per piece, whichever is higher" shall be substituted;

(xlvi) in sub-heading 6205.20, for the entry in column (4), the entry "30% or Rs. 85 per piece, whichever is higher" shall be substituted;

(xlvii) in sub-heading 6205.30, for the entry in column (4), the entry "30% or Rs. 120 per piece, whichever is higher" shall be substituted;

(xlviii) in sub-heading 6205.90, for the entry in column (4), the entry "30% or Rs. 95 per piece, whichever is higher" shall be substituted;

(xlix) in sub-heading 6206.10, for the entry in column (4), the entry "30%" shall be substituted;

(l) in sub-heading 6206.20, for the entry in column (4), the entry "30% or Rs. 135 per piece, whichever is higher" shall be substituted;

(li) in sub-heading 6206.30, for the entry in column (4), the entry "30% or Rs. 95 per piece, whichever is higher" shall be substituted;

(lii) in sub-heading 6206.40, for the entry in column (4), the entry "30% or Rs. 120 per piece, whichever is higher" shall be substituted;

(liii) in sub-heading 6206.90, for the entry in column (4), the entry "30%" shall be substituted;

(liv) in sub-heading 6207.11, for the entry in column (4), the entry "30% or Rs. 28 per piece, whichever is higher" shall be substituted;

(lv) in sub-heading 6207.19, for the entry in column (4), the entry "30% or Rs. 30 per piece, whichever is higher" shall be substituted;

(lvi) in sub-headings 6207.21, 6207.22, 6207.29, 6207.91 and 6207.92, for the entry in column (4) occurring against each of them, the entry "30%" shall be substituted;

(lvii) in sub-heading 6207.99, for the entry in column (4), the entry "30% or Rs. 70 per piece, whichever is higher" shall be substituted;

(lviii) in sub-heading 6208.11, for the entry in column (4), the entry "30% or Rs. 80 per piece, whichever is higher" shall be substituted;

(lix) in sub-heading 6208.19, for the entry in column (4), the entry "30% or Rs. 60 per piece, whichever is higher" shall be substituted;

(lx) in sub-headings 6208.21, 6208.22 and 6208.29, for the entry in column (4) occurring against each of them, the entry "30%" shall be substituted;

(lxi) in sub-heading 6208.91, for the entry in column (4), the entry "30% or Rs. 95 per piece, whichever is higher" shall be substituted;

(lxii) in sub-heading 6208.92, for the entry in column (4), the entry "30% or Rs. 65 per piece, whichever is higher" shall be substituted;

(lxiii) in sub-headings 6208.99, 6209.10, 6209.20, 6209.30, 6209.90 and 6210.10, for the entry in column (4) occurring against each of them, the entry "30%" shall be substituted;

(lxiv) in sub-heading 6210.20, for the entry in column (4), the entry "30% or Rs. 365 per piece, whichever is higher" shall be substituted;

(lxv) in sub-heading 6210.30, for the entry in column (4), the entry "30% or Rs. 305 per piece, whichever is higher" shall be substituted;

(lxvi) in sub-headings 6210.40 and 6210.50, for the entry in column (4) occurring against each of them, the entry "30% or Rs. 65 per piece, whichever is higher" shall be substituted;

(lxvii) in sub-headings 6211.11, 6211.12, 6211.20 and 6211.31, for the entry in column (4) occurring against each of them, the entry "30%" shall be substituted;

(lxviii) in sub-headings 6211.32 and 6211.33, for the entry in column (4) occurring against each of them, the entry "30% or Rs. 135 per piece, whichever is higher" shall be substituted;

(lxix) in sub-headings 6211.39 and 6211.41, for the entry in column (4) occurring against each of them, the entry "30%" shall be substituted;

(lxx) in sub-headings 6211.42 and 6211.43, for the entry in column (4) occurring against each of them, the entry "30% or Rs. 135 per piece, whichever is higher" shall be substituted;

(lxxi) in sub-heading 6211.49, for the entry in column (4), the entry "30%" shall be substituted;

(lxxii) in sub-headings 6212.10, 6212.20, 6212.30 and 6212.90, for the entry in column (4) occurring against each of them, the entry "30% or Rs. 30 per piece, whichever is higher" shall be substituted;

(lxxiii) in sub-headings 6213.10, 6213.20 and 6213.90, for the entry in column (4) occurring against each of them, the entry "30%" shall be substituted;

(lxxiv) in sub-heading 6214.10, for the entry in column (4), the entry "30% or Rs. 390 per piece, whichever is higher" shall be substituted;

(lxxv) in sub-heading 6214.20, for the entry in column (4), the entry "30% or Rs. 180 per piece, whichever is higher" shall be substituted;

(lxxvi) in sub-headings 6214.30 and 6214.40, for the entry in column (4) occurring against each of them, the entry "30%" shall be substituted;

(lxxvii) in sub-heading 6214.90, for the entry in column (4), the entry "30% or Rs. 75 per piece, whichever is higher" shall be substituted;

(lxxviii) in sub-headings 6215.10, 6215.20 and 6215.90, for the entry in column (4) occurring against each of them, the entry "30% or Rs. 55 per piece, whichever is higher" shall be substituted;

(lxxix) in sub-headings 6216.00, 6217.10 and 6217.90, for the entry in column (4) occurring against each of them, the entry "30%" shall be substituted;

(59) in Chapter 63,—

(i) for the entry in column (4) occurring against each of the sub-headings (except sub-headings 6301.20, 6302.21, 6302.31, 6310.10 and 6310.90), the entry "30%" shall be substituted;

(ii) in sub-heading 6301.20, for the entry in column (4), the entry "30% or Rs. 275 per piece, whichever is higher" shall be substituted;

(iii) in sub-heading 6302.21, for the entry in column (4), the entry "30% or Rs. 108 per kg., whichever is higher" shall be substituted;

(iv) in sub-heading 6302.31, for the entry in column (4), the entry "30% or Rs. 96 per kg., whichever is higher" shall be substituted;

(60) in Chapter 64, for the entry in column (4) occurring against each of the sub-headings, the entry "30%" shall be substituted;

(61) in Chapter 65, for the entry in column (4) occurring against each of the sub-headings, the entry "30%" shall be substituted;

(62) in Chapter 66, for the entry in column (4) occurring against each of the sub-headings, the entry "30%" shall be substituted;

(63) in Chapter 67, for the entry in column (4) occurring against each of the sub-headings, the entry "30%" shall be substituted;

(64) in Chapter 68, for the entry in column (4) occurring against each of the sub-headings, the entry "30%" shall be substituted;

(65) in Chapter 69, for the entry in column (4) occurring against each of the sub-headings (except sub-headings 6902.10, 6902.20, 6902.90, 6903.10, 6903.20 and 6903.90), the entry "30%" shall be substituted;

(66) in Chapter 70, for the entry in column (4) occurring against each of the sub-headings (except sub-headings 7019.19 and 7019.51), the entry "30%" shall be substituted;

(67) in Chapter 71, for the entry in column (4) occurring against each of the sub-headings, the entry "30%" shall be substituted;

(68) in Chapter 72, for the entry in column (4) occurring against each of the

sub-headings (except sub-headings 7201.10, 7201.20, 7201.50, 7202.11, 7202.19, 7202.21, 7202.29, 7202.30, 7202.41, 7202.49, 7202.50, 7202.60, 7202.70, 7202.80, 7202.91, 7202.92, 7202.93 and 7202.99), the entry "40%" shall be substituted;

(69) in Chapter 73, for the entry in column (4) occurring against each of the sub-headings, the entry "30%" shall be substituted;

(70) in Chapter 74, for the entry in column (4) occurring against each of the sub-headings, the entry "25%" shall be substituted;

(71) in Chapter 75, in sub-headings 7508.10 and 7508.90, for the entry in column (4) occurring against each of them, the entry "15%" shall be substituted;

(72) in Chapter 76,—

(i) for the entry in column (4) occurring against each of the sub-headings (except sub-headings 7615.11, 7615.19 and 7615.20), the entry "15%" shall be substituted;

(ii) in sub-headings 7615.11, 7615.19 and 7615.20, for the entry in column (4) occurring against each of them, the entry "30%" shall be substituted;

(73) in Chapter 78, for the entry in column (4) occurring against each of the sub-headings, the entry "25%" shall be substituted;

(74) in Chapter 79, for the entry in column (4) occurring against each of the sub-headings, the entry "25%" shall be substituted;

(75) in Chapter 80, for the entry in column (4) occurring against each of the sub-headings, the entry "15%" shall be substituted;

(76) in Chapter 81, for the entry in column (4) occurring against each of the sub-headings (except sub-headings 8104.11 and 8104.19), the entry "30%" shall be substituted;

(77) in Chapter 82, for the entry in column (4) occurring against each of the sub-headings, the entry "30%" shall be substituted;

(78) in Chapter 83, for the entry in column (4) occurring against each of the sub-headings, the entry "30%" shall be substituted;

(79) in Chapter 84,—

(i) in sub-headings 8407.31, 8407.32, 8407.33, 8407.34, 8408.20, 8409.91, 8409.99, 8414.30, 8414.51, 8414.59, 8414.80, 8414.90, 8415.10, 8415.20, 8415.81, 8415.82, 8415.83, 8415.90, 8418.21, 8418.22, 8418.29, 8418.91, 8418.99, 8422.11, 8422.19, 8422.90, 8423.10, 8448.19, 8450.11, 8450.12, 8450.19, 8450.20, 8450.90, 8451.10, 8451.90, 8452.10, 8452.90, 8469.12, 8469.20, 8469.30, 8472.10, 8472.20, 8472.30, 8472.90, 8473.10 and 8473.40, for the entry in column (4) occurring against each of them, the entry "30%" shall be substituted;

(ii) in sub-heading 8473.50, for the entry in column (4), the entry "10%" shall be substituted;

(iii) in sub-headings 8479.50, 8479.60, 8479.89, 8482.10, 8482.20, 8482.30, 8482.40, 8482.50, 8482.80, 8482.91, 8482.99, 8483.20, 8485.10 and 8485.90, for the entry in column (4) occurring against each of them, the entry "30%" shall be substituted;

(80) in Chapter 85,—

(i) in sub-headings 8504.10, 8506.10, 8506.30, 8506.40, 8506.50, 8506.60, 8506.80, 8506.90, 8507.10, 8507.20, 8507.30, 8507.40, 8507.80, 8507.90, 8509.10, 8509.20, 8509.30, 8509.40, 8509.80, 8509.90, 8510.10, 8510.20, 8510.30, 8510.90, 8511.10, 8511.20, 8511.30, 8511.40, 8511.50, 8511.80, 8511.90, 8512.10, 8512.20, 8512.30, 8512.40, 8512.90, 8513.10, 8513.90, 8516.10, 8516.21, 8516.29, 8516.31,

8516.32, 8516.33, 8516.40, 8516.50, 8516.60, 8516.71, 8516.72, 8516.79, 8516.80, 8518.10, 8518.21, 8518.22, 8518.29, 8518.30, 8518.40, 8518.50, 8519.10, 8519.21, 8519.29, 8519.31, 8519.39, 8519.40, 8519.92, 8519.93, 8519.99, 8520.10, 8520.32, 8520.33, 8520.39, 8520.90, 8521.10, 8521.90, 8522.10 and 8522.90, for the entry in column (4) occurring against each of them, the entry "30%" shall be substituted;

(ii) in sub-headings 8523.11, 8523.12, 8523.13 and 8523.20, for the entry in column (4) occurring against each of them, the entry "10%" shall be substituted;

(iii) in sub-heading 8523.30, for the entry in column (4), the entry "30%" shall be substituted;

(iv) in sub-heading 8523.90, for the entry in column (4), the entry "10%" shall be substituted;

(v) in sub-heading 8524.10, for the entry in column (4), the entry "30%" shall be substituted;

(vi) in sub-heading 8524.31, for the entry in column (4), the entry "10%" shall be substituted;

(vii) in sub-headings 8524.32 and 8524.39, for the entry in column (4) occurring against each of them, the entry "30%" shall be substituted;

(viii) in sub-heading 8524.40, for the entry in column (4), the entry "10%" shall be substituted;

(ix) in sub-headings 8524.51, 8524.52, 8524.53 and 8524.60, for the entry in column (4) occurring against each of them, the entry "30%" shall be substituted;

(x) in sub-heading 8524.91, for the entry in column (4), the entry "10%" shall be substituted;

(xi) in sub-headings 8524.99, 8525.30, 8525.40, 8526.10, 8526.91, 8526.92, 8527.12, 8527.13, 8527.19, 8527.21, 8527.29, 8527.31, 8527.32, 8527.39, 8527.90, 8528.12, 8528.13, 8528.21, 8528.22, 8528.30, 8531.10, 8531.80, 8531.90, 8536.10, 8536.20, 8536.30, 8536.41, 8536.49, 8536.50, 8536.61, 8536.69, 8536.90, 8537.10, 8538.10, 8538.90, 8539.10, 8539.21, 8539.22, 8539.29, 8539.31, 8539.32, 8539.39, 8539.41, 8539.49, 8539.90, 8540.11, 8540.91, 8543.40, 8543.89, 8544.11, 8544.19, 8544.20, 8544.30, 8544.41, 8544.49, 8544.51, 8544.59, 8544.60, 8548.10 and 8548.90, for the entry in column (4) occurring against each of them, the entry "30%" shall be substituted;

(81) in Chapter 86, for the entry in column (4) occurring against each of the sub-headings (except sub-headings 8607.11, 8607.12, 8607.19, 8607.21, 8607.29, 8607.30, 8607.91, 8607.99 and 8608.00), the entry "30%" shall be substituted;

(82) in Chapter 87, for the entry in column (4) occurring against each of the sub-headings (except sub-headings 8703.10, 8703.21, 8703.22, 8703.23, 8703.24, 8703.31, 8703.32, 8703.33, 8703.90, 8710.00, 8711.10, 8711.20, 8711.30, 8711.40, 8711.50 and 8711.90), the entry "30%" shall be substituted;

(83) in Chapter 88, in sub-headings 8801.90, 8802.60, 8803.90, 8804.00, 8805.10, 8805.21 and 8805.29, for the entry in column (4) occurring against each of them, the entry "30%" shall be substituted;

(84) in Chapter 89,—

(i) for the entry in column (4) occurring against each of the sub-headings (except sub-headings 8902.00, 8904.00, 8905.10, 8905.90, 8906.10, 8906.90 and 8908.00), the entry "30%" shall be substituted;

(ii) in sub-heading 8908.00, for the entry in column (4), the entry "15%" shall be substituted;

(85) in Chapter 90,—

(i) in sub-headings 9001.10, 9001.20, 9001.30, 9001.40, 9001.50, 9001.90, 9002.11, 9002.19, 9002.20, 9002.90, 9003.11, 9003.19, 9003.90, 9004.10, 9004.90, 9005.10, 9005.80, 9005.90, 9006.10, 9006.20, 9006.30, 9006.40, 9006.51, 9006.52, 9006.53, 9006.59, 9006.61, 9006.62, 9006.69, 9008.10, 9008.20, 9008.30, 9008.40, 9009.12, 9009.22, 9009.30, 9010.60, 9022.19, 9022.29, 9022.30 and 9022.90, for the entry in column (4) occurring against each of them, the entry "30%" shall be substituted;

(ii) in sub-heading 9026.90, for the entry in column (4), the entry "5%" shall be substituted;

(86) in Chapter 91, in sub-headings 9101.11, 9101.12, 9101.19, 9101.21, 9101.29, 9101.91, 9101.99, 9102.11, 9102.12, 9102.19, 9102.21, 9102.29, 9102.91, 9102.99, 9103.10, 9103.90, 9104.00, 9105.11, 9105.19, 9105.21, 9105.29, 9105.91, 9105.99, 9106.10, 9106.20, 9106.90, 9107.00, 9111.10, 9111.20, 9111.80, 9111.90, 9112.20, 9112.90, 9113.10, 9113.20 and 9113.90, for the entry in column (4) occurring against each of them, the entry "30%" shall be substituted;

(87) in Chapter 92, for the entry in column (4) occurring against each of the sub-headings, the entry "30%" shall be substituted;

(88) in Chapter 93, for the entry in column (4) occurring against each of the sub-headings, the entry "30%" shall be substituted;

(89) in Chapter 94, for the entry in column (4) occurring against each of the sub-headings, the entry "30%" shall be substituted;

(90) in Chapter 95, for the entry in column (4) occurring against each of the sub-headings (except sub-headings 9506.11, 9506.12, 9506.19, 9506.21, 9506.29, 9506.31, 9506.32, 9506.39, 9506.40, 9506.51, 9506.59, 9506.61, 9506.62, 9506.69, 9506.70, 9506.91, 9506.99, 9507.10, 9507.20, 9507.30 and 9507.90), the entry "30%" shall be substituted;

(91) in Chapter 96, for the entry in column (4) occurring against each of the sub-headings, the entry "30%" shall be substituted;

(92) in Chapter 97, for the entry in column (4) occurring against each of the sub-headings (except sub-heading 9704.00), the entry "30%" shall be substituted;

(93) in Chapter 98, in sub-headings 9802.00, 9804.10, 9804.90, 9805.10 and 9805.90, for the entry in column (4) occurring against each of them, the entry "30%" shall be substituted;

THE THIRD SCHEDULE

[See section 142(1)]

In the Schedule to the notification, referred to in sub-section (1) of section 142, for the entry "16. Mineral based", the following entry shall be substituted, namely:—

‘16. Mineral based

Explanation.—For the removal of doubts, it is hereby declared that for the purposes of this notification, “mineral” does not include crude petroleum oils and the expression “mineral based” shall be construed accordingly.’.

THE FOURTH SCHEDULE

[See section 144(1)]

Notification No. and date	Amendment	Date of effect of amendment
(1)	(2)	(3)
G.S.R. 299 (E), dated the 31st March, 2000 [28/ 2000-Central Excise (N.T.), dated the 31st March, 2000]	<p>In the said notification, for <i>Explanation II</i>, the following <i>Explanation</i> shall be substituted, namely: —</p> <p><i>Explanation II.</i>—For the purposes of this notification, “composite mill” means a manufacturer who is engaged in the processing of fabrics with the aid of power along with the spinning of yarn from fibres and weaving or knitting or crocheting of fabrics within the same factory and includes a multi-locational composite mill, that is to say, a public limited company which is engaged in the processing of fabrics with the aid of power along with the spinning of yarn from fibres and weaving or knitting or crocheting of fabrics in one or more factories owned by the same public limited company.’</p>	1st day of April, 2000.

THE FIFTH SCHEDULE

[See section 145(i)]

PART I

In the First Schedule to the Central Excise Tariff Act,—

(1) in Chapter 9, in sub-heading No. 0902.00, for the entry in column (4), the entry "Re. 1 per kilogram" shall be substituted;

(2) in Chapter 17, after NOTE 3, the following NOTE shall be inserted, namely:—

'4. In relation to the products of heading No. 17.02, labelling or relabelling of containers and repacking from bulk packs to retail packs or the adoption of any other treatment to render the product marketable to the consumer, shall amount to "manufacture".';

(3) in Chapter 24, in sub-heading Nos. 2402.00, 2403.31 and 2403.32, for the entry in column (4) occurring against each of them, the entry "16%" shall be substituted;

(4) in Chapter 30, in sub-heading No. 3004.10, for the entry in column (4), the entry "16%" shall be substituted;

(5) in Chapter 40,—

(i) in sub-heading No. 4005.10, for the entry in column (3), the following entry shall be substituted, namely:—

"— Plates, sheets or strip, whether or not combined with any textile material, in relation to the manufacture of which no CENVAT credit of duty paid on the inputs used has been availed";

(ii) in sub-heading Nos. 4011.10 and 4013.10, for the entry in column (4) occurring against each of them, the entry "16%" shall be substituted;

(6) in Chapter 44, in sub-heading Nos. 4410.19 and 4410.90, for the entry in column (4) occurring against each of them, the entry "16%" shall be substituted;

(7) in Chapter 48,—

(i) in SUB-HEADING NOTE 3, for clause (a), the following clause shall be substituted, namely:—

"(a) follow the procedure under the Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001; and";

(ii) in sub-heading Nos. 4820.00, 4821.00 and 4823.20, for the entry in column (4) occurring against each of them, the entry "16%" shall be substituted;

(8) in Chapter 59, in sub-heading No. 5906.10, for the entry in column (4), the entry "16%" shall be substituted;

(9) in Chapter 61,—

(i) after NOTE 2, the following NOTES shall be inserted, namely:—

'3. In relation to a product of this Chapter, "brand name" means a brand name, whether registered or not, that is to say, a name or a mark, such as a symbol, monogram, label, signature or invented word or any writing which is used in relation to a product, for the purposes of indicating, or so as to indicate, a connection in the course of trade between the

product and some person using such name or mark with or without any indication of the identity of that person.

4. In relation to a product of this Chapter, affixing a brand name on the product, labelling or relabelling of its containers and repacking from bulk packs to retail packs or the adoption of any other treatment to render the product marketable to the consumer, shall amount to "manufacture".;

(ii) in sub-heading Nos. 6101.00 and 6102.00, for the entry in column (4) occurring against each of them, the entry "16%" shall be substituted;

(10) in Chapter 66, in sub-heading Nos. 6601.00 and 6602.00, for the entry in column (4) occurring against each of them, the entry "16%" shall be substituted;

(11) in Chapter 68, in sub-heading No. 6807.20, for the entry in column (4), the entry "16%" shall be substituted;

(12) in Chapter 70, in sub-heading Nos. 7011.10 and 7012.10, for the entry in column (4) occurring against each of them, the entry "16%" shall be substituted;

(13) in Chapter 73,—

(i) after NOTE 3, the following NOTE shall be inserted, namely:—

‘4. In relation to the products of this Chapter, the process of galvanization shall amount to "manufacture".’;

(ii) in sub-heading No. 7326.21, for the entry in column (4), the entry "16%" shall be substituted;

(14) in Chapter 74, in sub-heading No. 7418.10, for the entry in column (4), the entry "16%" shall be substituted;

(15) in Chapter 82, in sub-heading No. 8215.00, for the entry in column (4), the entry "16%" shall be substituted;

(16) in Chapter 84, in sub-heading Nos. 8413.11, 8413.12, 8413.13, 8413.14, 8413.20, 8413.91, 8414.10, 8414.20, 8414.91, 8481.20, 8481.92 and 8483.10, for the entry in column (4) occurring against each of them, the entry "16%" shall be substituted;

(17) in Chapter 85, in sub-heading No. 8524.32, for the entry in column (4), the entry "16%" shall be substituted;

(18) in Chapter 87, in sub-heading No. 8712.00, for the entry in column (4), the entry "16%" shall be substituted;

(19) in Chapter 90, in sub-heading Nos. 9018.00, 9019.00 and 9022.10, for the entry in column (4) occurring against each of them, the entry "16%" shall be substituted;

(20) in Chapter 94, in sub-heading Nos. 9405.10 and 9406.00, for the entry in column (4) occurring against each of them, the entry "16%" shall be substituted;

(21) in Chapter 95, in sub-heading Nos. 9501.00, 9502.00 and 9503.00, for the entry in column (4) occurring against each of them, the entry "16%" shall be substituted.

PART II

Heading No.	Sub-heading No.	Description of goods	Rate of duty
(1)	(2)	(3)	(4)

In the First Schedule to the Central Excise Tariff Act, in Chapter 36, for heading No. 36.05 and the entries relating thereto, the following shall be substituted, namely:—

“36.05

MATCHES, OTHER
THAN PYROTECHNIC
ARTICLES OF HEADING
NO. 36.04

3605.10
3605.90

- Bengal Lights
- Others

16%
Rs. 1.30 for
every 1000
matches or
fraction thereof”.

THE SIXTH SCHEDULE

[See section 145(ii)]

Heading No.	Sub-heading No.	Description of Goods	Rate of Special duty of excise
(1)	(2)	(3)	(4)

In the Second Schedule to the Central Excise Tariff Act,—

(1) heading No. 25.02, sub-heading Nos. 2502.21, 2502.30, 2502.40, 2502.50 and 2502.90 and the entries relating thereto shall be omitted;

(2) heading No. 33.04, sub-heading No. 3304.00 and the entries relating thereto shall be omitted;

(3) heading No. 33.05, sub-heading No. 3305.99 and the entries relating thereto shall be omitted;

(4) heading No. 33.07, sub-heading Nos. 3307.10, 3307.20, 3307.39 and 3307.90 and the entries relating thereto shall be omitted;

(5) heading No. 43.01, sub-heading No. 4301.00 and the entries relating thereto shall be omitted;

(6) heading No. 89.03, sub-heading No. 8903.00 and the entries relating thereto shall be omitted;

(7) heading No. 89.07, sub-heading No. 8907.00 and the entries relating thereto shall be omitted;

(8) heading No. 93.02, sub-heading No. 9302.00 and the entries relating thereto shall be omitted;

(9) heading No. 93.03, sub-heading No. 9303.00 and the entries relating thereto shall be omitted;

(10) heading No. 93.04, sub-heading No. 9304.00 and the entries relating thereto shall be omitted;

(11) heading No. 93.05, sub-heading No. 9305.00 and the entries relating thereto shall be omitted;

(12) heading No. 93.06, sub-heading No. 9306.00 and the entries relating thereto shall be omitted;

(13) heading No. 93.07, sub-heading No. 9307.00 and the entries relating thereto shall be omitted;

(14) heading No. 96.05, sub-heading No. 9605.10 and the entries relating thereto shall be omitted.

THE SEVENTH SCHEDULE

(See section 146)

In the First Schedule to the Additional Duties of Excise Act, in sub-heading Nos. 5207.20, 5208.20, 5209.10, 5406.10, 5407.10, 5511.10, 5512.10, 5513.10, 5514.10, 5801.21, 5801.31, 5802.21, 5802.31, 6002.10 and 6002.20, for the entry in column (4) occurring against each of them, the entry "8%" shall be substituted.

THE EIGHTH SCHEDULE

(See section 147)

Item No.	Description of goods	Rate of duty
(1)	(2)	(3)
1.	Motor spirit, commonly known as petrol	Rs. seven per litre
2	High speed diesel oil	Re. one per litre.

THE NINTH SCHEDULE

(See section 143)

Notification No. and date	Amendment	Date of effect of amendment
(1)	(2)	(3)
G.S.R. 143 (E), dated the 1st March, 2002 [4/ 2002-Central Excise (N.T.), dated the 1st March, 2002]	<p>In the Central Excise Rules, 2002,—</p> <p>(a) in rule 8, after sub-rule (1), the following sub-rule shall be inserted, namely:—</p> <p>“(1A) Notwithstanding anything contained in sub-rule (1), the duty on the goods removed from the factory or the warehouse, in the State of Gujarat, during the second fortnight of February, 2002 and the month of March, 2002 shall be paid by the 31st March, 2002 :</p> <p>Provided that where an assessee in the State of Gujarat is availing of the exemption under a notification based on the value of clearances in a financial year, the duty on goods cleared during the month of February, 2002 shall be paid by the 31st March, 2002.</p> <p><i>Explanation.</i>— For removal of doubts, it is hereby clarified that the duty liability shall be deemed to have been discharged only if the amount payable is credited to the account of the Central Government by the specified date.”;</p> <p>(b) after rule 8, the following rule shall be inserted, namely:—</p> <p>“8A. Manner of payment in respect of specified goods on which excise duty has been imposed with effect from 1st March, 2002.—(1) Notwithstanding anything contained in rule 8, the duty on the goods, specified in the Annexure to this rule, removed from the factory or the warehouse during the period commencing on and from the 1st March, 2002 and ending with and including the 31st May, 2002, shall be paid by the 15th day of June, 2002.</p> <p><i>Explanation.</i>— For removal of doubts, it is hereby clarified that the duty liability shall be deemed to have been discharged only if the amount payable is credited to the account of the Central Government by the specified date.</p> <p>(2) The duty of excise shall be deemed to have been paid for the purposes of these rules on the excisable goods removed in the manner provided under sub-rule (1) and the credit of such duty allowed, as provided by or under any rule.</p>	<p>1st March, 2002.</p> <p>1st March, 2002.</p>

(1)	(2)	(3)
-----	-----	-----

(3) If the assessee fails to pay the amount of duty by due date, he shall be liable to pay the outstanding amount along with interest at the rate specified by the Central Government *vide* notification issued under section 11AB of the Act on the outstanding amount, for the period starting with the first day after due date till the date of actual payment of the outstanding amount.

(4) If the assessee defaults in payment of duty by the 15th day of June, 2002, then, the assessee shall forfeit the facility to pay the dues in instalments as provided under sub-rule (1) of rule 8 for the clearances made after the 1st day of June, 2002 for a period of two months, commencing on and from the date of communication of the order passed by the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, in this regard, or till such date on which the dues are paid, whichever is later, and during this period the assessee shall be required to pay excise duty for each consignment by debiting to the account current and in the event of any failure to do so, it shall be deemed that such goods have been cleared without payment of duty and the consequences and penalties as provided in these rules, shall follow.

Annexure

(1) All goods specified at S. Nos. 9 to 50 of the Table to the notification of the Government of India, Ministry of Finance (Department of Revenue) No. 10/2002-Central Excise, dated the 1st March, 2002 published in the Gazette of India *vide* number G.S.R. 131(E), dated the 1st March, 2002, which were exempt from whole of the duty leviable thereon immediately prior to 1st March, 2002 and on which duty has become leviable with effect from 1st March, 2002, at the rate of 4% *ad valorem*, subject to the conditions specified in that notification or, as the case may be, at the rate of 16% *ad valorem*.

(2) Granite falling under heading No. 68.07 manufactured by units which would have been eligible for exemption from duty whether in whole or in part under notification No. 8/2001-Central Excise or No. 9/2001-Central Excise, dated the 1st March, 2001, as they existed before 1st March, 2002 and granite falling under heading No. 68.07 manufactured by units which would have been eligible for exemption whether in whole or in part if such exemption had not been withdrawn under notification No. 8/2002-Central Excise or, as the case may be, under notification No. 9/2002-Central Excise, both dated the 1st March, 2002.

(3) Woven fabrics of cotton, falling under Chapter 52, when subjected to any one or more of the following processes, namely:—

(1)

(2)

(3)

- (a) flannellete raising;.
- (b) stentering;
- (c) damping on grey and bleached sorts;
- (d) back filling on grey and bleached sorts;
- (e) singeing, that is to say, burning away of knots and loose ends in the fabrics;
- (f) cropping or buta cutting;
- (g) curing or heat setting;
- (h) padding, that is to say, applying starch or fatty material on one or both sides of the fabric; or
- (i) expanding,

if such fabrics are processed in a factory which does not have the facilities (including plant and equipment) for carrying out bleaching, dyeing or printing or any one or more of these processes with the aid of power or steam and such fabrics were exempt from whole of the duties leviable thereon under the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) and the First Schedule to the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957), immediately prior to 1st March, 2002 and on which duties have become leviable with effect from 1st March, 2002, at the rate of 12% *ad valorem*.

(4) Woven fabrics of man-made fibres, falling under Chapter 54 or Chapter 55, when subjected to any one or more of the following processes, namely:—

- (a) singeing, that is to say, burning away of knots and loose ends in the fabrics;
- (b) padding, that is to say, application of natural starch to one or both sides of the fabrics;
- (c) back filling, that is to say, application of starch to one side of the fabrics;
- (d) cropping, that is to say, cutting away mechanically of loose ends from the fabrics; or
- (e) the process of blowing (steam pressing) carried out on woven fabrics of acrylic fibre,

if such fabrics are processed in a factory which does not have the facilities (including plant and equipment) for carrying out bleaching, dyeing or printing or any one or more of these processes with the aid of power or steam, and such fabrics were exempt from whole of the duties leviable thereon under the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) and the First Schedule to the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957), immediately prior to 1st March, 2002 and on which duties have become leviable with effect from 1st March, 2002, at the rate of 12% *ad valorem*.”;

(1)	(2)	(3)
	(c) after rule 12, the following rule shall be inserted, namely:—	1st March, 2002.
	<p>“12A. Filling of return in respect of specified goods on which excise duty has been imposed on and from the 1st March, 2002. —Notwithstanding anything contained in rule 12, every assessee shall submit, in respect of goods specified in the Annexure to rule 8A, to the Superintendent of Central Excise a return for the months of March, April and May, 2002, in the form specified by notification by the Board, of production and removal of the said goods and other relevant particulars, by the 10th day of June, 2002.”</p>	

Sd/-

Dr. SUBHASH C. JAIN,

Secretary to the Government of India.

By order and in the name of the Governor of Gujarat,

V. M. KOTHARE,

Secretary to Government.

Government Central Press, Gandhinagar.



सत्यमेव जयते

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Separate paging is given to this Part in order that it may be filed as a Separate Compilation.

PART - VI

Acts of Parliament and Ordinances Promulgated by the President

LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT

Notification

Sachivalaya, Gandhinagar, 27th November, 2002.

No. RPB/41/2002/Act-2102-E:—The following Act of Parliament is republished for general information :-

GOVERNMENT OF INDIA

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS

(Legislative Department)

New Delhi, the 24th May, 2002/Jyaistha 3, 1924 (SAKA)

The following Act of Parliament received the assent of the President on the 23rd May, 2002 and is hereby published for general information:—

THE ST. JOHN AMBULANCE ASSOCIATION (INDIA) TRANSFER OF FUNDS (REPEAL) ACT, 2002

AN ACT

(Act No. 21 of 2002)

(23rd May, 2002)

to repeal the St. John Ambulance Association (India) Transfer of Funds Act, 1956.

BE it enacted by Parliament in the Fifty-third Year of the Republic of India as follows:—

1. This Act may be called the St. John Ambulance Association (India) Transfer of Funds (Repeal) Act, 2002. Short title.

2. The St. John Ambulance Association (India) Transfer of Funds Act, 1956 is hereby repealed.

Repeal of Act
21 of 1956.

Sd/-

DR. SUBHASH C. JAIN,
Secy. to the Govt. of India.

By order and in the name of the Governor of Gujarat,

V. M. KOTHARE,
Secretary to Government.

GOVERNMENT CENTRAL PRESS, GANDHINAGAR.



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Separate paging is given to this Part in order that it may be filed as a Separate Compilation.

PART - VI

Acts of Parliament and Ordinances Promulgated by the President LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT Notification

Sachivalaya, Gandhinagar, 27th November, 2002.

No. RPB/42/2002/Act-2302-E:—The following Act of Parliament is republished for general information :-

GOVERNMENT OF INDIA MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (Legislative Department)

New Delhi, the 24th May, 2002/Jyaistha 3, 1924 (SAKA)

The following Act of Parliament received the assent of the President on the 23rd May, 2002 and is hereby published for general information:—

THE VICE-PRESIDENT'S PENSION (AMENDMENT) ACT, 2002 AN ACT

(Act No. 23 of 2002)

(23rd May, 2002)

further to amend the Vice-President's Pension Act, 1997.

BE it enacted by Parliament in the Fifty-third Year of the Republic of India as follows:—

1. (1) This Act may be called the Vice-President's Pension (Amendment) Act, 2002.

Short title and
commence-
ment.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

30 of 1997.

2. In section 2 of the Vice-President's Pension Act, 1997 (hereinafter referred to as the principal Act), after sub-section (1), the following sub-section shall be inserted, namely:—

Amendment
of section 2.

“(1A) The spouse of a person who dies—

(a) while holding the office of Vice-President, or

(b) after ceasing to hold office as Vice-President either by the expiration of his term of office or by resignation of his office,

shall be paid a family pension at the rate of fifty per cent. of pension as is admissible to a retiring Vice-President, for the remainder of her life.”

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GUJARAT GOVERNMENT GAZETTE, EX., 27-11-2002 [PART VI

Insertion of
new section 3A.

3. After section 3 of the principal Act, the following section shall be inserted, namely:—

Free accom-
modation to
spouse of Vice-
President.

“3A. Subject to any rules that may be made in this behalf, the spouse of a person who dies—

(a) while holding the office of Vice-President, or

(b) after ceasing to hold office as Vice-President either by the expiration of his term of office or by resignation of his office,

shall be entitled to the use of unfurnished residence without payment of licence fee, for the remainder of her life.”

Sd/-

DR. SUBHASH C. JAIN,
Secy. to the Govt. of India.

By order and in the name of the Governor of Gujarat,

V. M. KOTHARE,
Secretary to Government.

GOVERNMENT CENTRAL PRESS, GANDHINAGAR.



सत्यमेव जयते

The Gujarat Government Gazette EXTRAORDINARY

PUBLISHED BY AUTHORITY

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PART - VI

Acts of Parliament and Ordinances Promulgated by the President LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT

Sachivalaya, Gandhinagar, 27th November, 2002.

No. : RPB/55/2002/ACT-3602/E : The following Act of Parliament is republished for general information :-

GOVERNMENT OF INDIA

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS,

(Legislative Department),

New Delhi, the 12th June, 2002/Jyastha 22, 1924 (Saka)

The following Act of Parliament received the assent of the President on the 11th June, 2002 and is hereby published for general information :-

THE FOREIGN AIRCRAFT (EXEMPTION FROM TAXES AND DUTIES ON FUEL AND LUBRICANTS) ACT, 2002

AN ACT

(Act No. 36 of 2002)

(11th June, 2002)

*to implement Agreements entered into by India with other countries in pursuance of
the Convention on International Civil Aviation opened for signatures at
Chicago on the 7th December, 1944.*

WHEREAS a Convention on International Civil Aviation was signed by India on the 7th December, 1944;

AND WHEREAS India, having signed the said Convention, entered into Agreements with the parties to the said Convention to exempt the taxes and duties on fuel and lubricants supplied in India to the aircraft of the contracting parties.

BE it enacted by Parliament in the Fifty-third Year of the Republic of India as follows :—

1. (1) This Act may be called the Foreign Aircraft (Exemption from Taxes and Duties on Fuel and Lubricants) Act, 2002.

Short title and
extent.

Definitions.

(2) It extends to the whole of India.

2. In this Act, unless the context otherwise requires,—

(a) "Agreements" means the Air Services Agreements or Air Transport Agreements entered into by India with parties to the Convention;

(b) "Convention" means the Convention on International Civil Aviation opened for signatures at Chicago on the 7th December, 1944.

Exemption
from levy of
taxes and
duties on fuel
and lubricants
supplied to
aircraft of
other
countries.

3. Where, in pursuance of the Convention or Agreement with any other country or countries, it is necessary to grant exemption from levy of taxes and duties on fuel and lubricants filled into receptacles forming part of any aircraft of any other country or countries under any law of a State or Union territory in India, the Central Government may, by notification in the Official Gazette, make such provisions as may be necessary for giving effect to the said Convention or Agreement and thereupon the said provision shall apply accordingly and, notwithstanding anything contrary contained in any other law, shall in such application have the force of law in India.

Sd/-

Dr. SUBHASH C. JAIN,

Secretary to the Government of India.

By order and in the name of the Governor of Gujarat,

V. M. KOTHARE,

Secretary to Government.

Government Central Press, Gandhinagar.



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PART - VI

Acts of Parliament and Ordinances Promulgated by the President

LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT

Sachivalaya, Gandhinagar, 27th November, 2002.

No. : RPB/57/2002/ACT-3802/E : The following Act of Parliament is republished for general information :-

GOVERNMENT OF INDIA

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS,

(Legislative Department),

New Delhi, the 25th June, 2002/Asadha 4, 1924 (Saka)

The following Act of Parliament received the assent of the President on the 25th June, 2002 and is hereby published for general information :-

THE PATENTS (AMENDMENT) ACT, 2002.

AN ACT

(Act No. 38 of 2002)

(25th June, 2002)

further to amend the Patents Act, 1970.

Be it enacted by Parliament in the Fifty-third Year of the Republic of India as follows:—

1. (1) This Act may be called the Patents (Amendment) Act, 2002.

Short title and
commence-
ment.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint; and different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

Substitution
of certain
words for the
words "High
Court" and
"Court".

2. In the Patents Act, 1970 (hereinafter referred to as the principal Act), for the words "High Court" wherever they occur in sections 21, 43 and 71 and the word "Court" occurring in sections 21 and 71, the words "Appellate Board" and "Board" shall respectively be substituted.

39 of 1970

Amendment
of section 2.

3. In section 2 of the principal Act, in sub-section (1),—

(a) for clause (a), the following clauses shall be substituted, namely:—

'(a) "Appellate Board" means the Appellate Board referred to in section 116;

(ab) "assignee" includes an assignee of the assignee and the legal representative of a deceased assignee and references to the assignee of any person include references to the assignee of the legal representative or assignee of that person;

(ac) "capable of industrial application", in relation to an invention, means that the invention is capable of being made or used in an industry;";

(b) for clause (d), the following clause shall be substituted, namely:—

'(d) "convention country" means a country or a country which is a member of a group of countries or a union of countries or an Inter-governmental organisation notified as such under sub-section (1) of section 133;";

(c) for clause (g), the following clause shall be substituted, namely:—

'(g) "food" means any article of nourishment for human consumption and also includes any substance intended for the use of infants, invalids or convalescents as an article of food or drink;";

(d) in clause (i),—

(i) in sub-clause (i), for the words "Union territory of Delhi", the words "National Capital Territory of Delhi" shall be substituted;

(ii) for sub-clause (ii), the following sub-clause shall be substituted, namely:—

"(ii) in relation to the State of Arunachal Pradesh and the State of Mizoram, the Gauhati High Court (the High Court of Assam, Nagaland, Meghalaya, Manipur, Tripura, Mizoram and Arunachal Pradesh);";

(iii) in sub-clause (v), for the words "Union territory of Goa, Daman and Diu", the words "State of Goa, the Union territory of Daman and Diu" shall be substituted;

(e) after clause (i), the following clause shall be inserted, namely:—

'(ia) "international application" means an application for patent made in accordance with the Patent Cooperation Treaty;";

(f) for clause (j), the following clauses shall be substituted, namely:—

'(j) "invention" means a new product or process involving an inventive step and capable of industrial application;

(ja) "inventive step" means a feature that makes the invention not obvious to a person skilled in the art;";

(g) for clause (m), the following clause shall be substituted, namely:—

'(m) "patent" means a patent granted under this Act;";

(h) after clause (o), the following clause shall be inserted, namely:—

'(oa) "Patent Cooperation Treaty" means the Patent Cooperation Treaty done at Washington on the 19th day of June, 1970 as amended and modified from time to time;";

(g) for clause (a), the following clause shall be substituted, namely:—

(u) "prescribed" means,—

(A) in relation to proceedings before a High Court, prescribed by rules made by the High Court;

(B) in relation to proceedings before the Appellate Board, prescribed by rules made by the Appellate Board; and

(C) in other cases, prescribed by rules made under this Act.

4. In section 3 of the principal Act,—

Amendment of
section 3.

(a) for clause (b), the following clause shall be substituted, namely:—

"(b) an invention the primary or intended use or commercial exploitation of which would be contrary to public order or morality or which causes serious prejudice to human, animal or plant life or health or to the environment;"

(b) in clause (c), after the words "an abstract theory", the words "or discovery of any living thing or non-living substance occurring in nature" shall be inserted;

(c) clause (g) shall be omitted;

(d) in clause (i),—

(i) after the word "prophylactic", the words "diagnostic, therapeutic" shall be inserted;

(ii) the words "or plants" shall be omitted;

(e) after clause (i), the following clauses shall be inserted, namely:—

"(j) plants and animals in whole or any part thereof other than micro-organisms but including seeds, varieties and species and essentially biological processes for production or propagation of plants and animals;

(k) a mathematical or business method or a computer programme *per se* or algorithms;

(l) a literary, dramatic, musical or artistic work or any other aesthetic creation whatsoever including cinematographic works and television productions;

(m) a mere scheme or rule or method of performing mental act or method of playing game;

(n) a presentation of information;

(o) topography of integrated circuits;

(p) an invention which, in effect, is traditional knowledge or which is an aggregation or duplication of known properties of traditionally known component or components."

5. In section 5 of the principal Act, after sub-section (2), the following *Explanation* shall be inserted, namely:—

Amendment of
section 5.

Explanation.—For the purposes of this section, "chemical processes" includes biochemical, biotechnological and microbiological processes.

6. In section 7 of the principal Act, after sub-section (1), the following sub-section shall be inserted, namely:—

Amendment
of section 7.

"(1A) Every international application under the Patent Cooperation Treaty for a patent, as may be filed designating India, shall be deemed to be an application under this Act, if a corresponding application has also been filed before the Controller in India."

7. In section 8 of the principal Act,—

Amendment
of section 8.

(a) in sub-section (1),—

(i) in the opening portion, after the words "he shall file along with his application", the words "or subsequently within such period as the Controller may, for good and sufficient reasons, allow" shall be inserted;

(ii) for clause (a), the following clause shall be substituted, namely:—

"(a) a statement setting out detailed particulars of such application; and";

(iii) in clause (b), for the words "details of the nature referred to in", the words "detailed particulars as required under" shall be substituted;

(b) for sub-section (2), the following sub-section shall be substituted, namely:—

"(2) At any time after an application for patent is filed in India and till the grant of patent or refusal to grant of patent is made thereon, the Controller may also require the applicant to furnish details, as may be prescribed, relating to the processing of the application in a country outside India, and in that event the applicant shall furnish information available to him to the Controller within thirty days from the date of receipt of the communication requiring such furnishing of information or within such further period as the Controller may, for good and sufficient reasons, allow."

Amendment
of section 10.

8. In section 10 of the principal Act,—

(a) in sub-section (4), after clause (c), the following clause shall be inserted, namely:—

"(d) be accompanied by an abstract to provide technical information on the invention:

Provided that—

(i) the Controller may amend the abstract for providing better information to third parties; and

(ii) if the applicant mentions a biological material in the specification which may not be described in such a way as to satisfy clauses (a) and (b), and if such material is not available to the public, the application shall be completed by depositing the material to an authorised depository institution as may be notified by the Central Government in the Official Gazette and by fulfilling the following conditions, namely:—

(A) the deposit of the material shall be made not later than the date of the patent application in India;

(B) all the available characteristics of the material required for it to be correctly identified or indicated are included in the specification including the name, address of the depository institution and the date and number of the deposit of the material at the institution;

(C) access to the material is available in the depository institution only after the date of the application for patent in India or if a priority is claimed after the date of the priority;

(D) disclose the source and geographical origin of the biological material in the specification, when used in an invention."

(b) after sub-section (4), the following sub-section shall be inserted, namely:—

"(4A) In case of an international application designating India,—

(i) the title, description, drawings, abstract and claims filed with the application shall be taken as the complete specification for the purposes of this Act; and

(ii) the filing date of the application and its complete specification, processed by the patent office as designated office or elected office, shall be the international filing date accorded under the Patent Cooperation Treaty.";

(c) for sub-section (5), the following sub-section shall be substituted, namely:—

"(5) The claim or claims of a complete specification shall relate to a single invention, or to a group of inventions linked so as to form a single inventive concept, shall be clear and succinct and shall be fairly based on the matter disclosed in the specification."

9. In Chapter IV of the principal Act,—

Amendment
of Chapter
IV.

(a) for the Chapter heading "EXAMINATION OF APPLICATIONS", the following Chapter heading shall be substituted, namely:—

"PUBLICATION AND EXAMINATION OF APPLICATIONS";

(b) before section 12, the following sections shall be inserted, namely:—

"11A. (1) Applications for patents shall not be open to the public for a period of eighteen months from the date of filing or date of priority, whichever is earlier.

Publication of
applications.

(2) Except when a secrecy direction is given under section 35, every application for a patent shall, on the expiry of the period as specified in sub-section (1), be published.

(3) The publication of every application for a patent shall be notified in the Official Gazette.

(4) In case a secrecy direction has been given in respect of an application under section 35, then, it shall be published after the expiry of the period of eighteen months or when the secrecy direction has ceased to operate, whichever is later.

(5) The publication of every application under this section shall include the particulars of the date of application, number of application, name and address of the applicant identifying the application and an abstract.

(6) Upon publication of an application for a patent under this section—

(a) the depository institution shall make the biological material mentioned in the specification available to the public;

(b) the patent office may, on payment of such fee as may be prescribed, make the specification and drawings, if any, of such application available to the public.

11B. (1) No application for a patent shall be required to be examined unless the applicant or any other interested person makes a request in the prescribed manner for such examination within forty-eight months from the date of filing of the application for patent.

Request for
examination.

(2) In case of an application filed before the commencement of the Patents (Amendment) Act, 2002, a request in the prescribed manner for examination shall be made by the applicant or any other interested person within a period of twelve months from the date of such commencement or within forty-eight months from the date of the application, whichever is later.

(3) In case of an application in respect of a claim for a patent covered under sub-section (2) of section 5, a request in the prescribed manner for examination shall be made by the applicant or any other interested person within a period of twelve months from the 31st day of December, 2004 or within forty-eight months from the date of the application, whichever is later.

(4) In case the applicant or any other interested person does not make a request for examination of the application for a patent within the period as specified under sub-section (1) or sub-section (2) or sub-section (3), the application shall be treated as withdrawn by the applicant:

Provided that—

(i) the applicant may, at any time after the filing of the application but before the grant of the patent, withdraw the application made by him; and

(ii) in a case where a secrecy direction has been issued under section 35, the request for examination may be made within forty-eight months from the date of revocation of the secrecy direction."

Amendment
of section 12.

10. In section 12 of the principal Act,—

(a) in sub-section (1),—

(i) for the words "When the complete specification has been filed in respect of an application for a patent, the application and specification relating thereto", the words, brackets, figures and letter "When a request for examination has been made in respect of an application for a patent in the prescribed manner under sub-section (1) or sub-section (2) or sub-section (3) of section 11B, the application and specification and other documents relating thereto" shall be substituted;

(ii) in clause (a), for the words "specification relating thereto", the words "specification and other documents relating thereto" shall be substituted;

(b) in sub-section (2), for the words "specification relating thereto", the words "specification and other documents relating thereto" shall be substituted.

Amendment
of section 13.

11. In section 13 of the principal Act, in sub-section (2), the words "as the Controller may direct" shall be omitted.

Substitution of
new section
for section 15.

12. For section 15 of the principal Act, the following section shall be substituted, namely:—

Power of
Controller to
refuse or
require
amended
applications,
etc., in
certain cases.

"15. Where the Controller is satisfied that the application or any specification or any other document filed in pursuance thereof does not comply with the requirements of this Act or of any rules made thereunder, the Controller may require the application, specification or other document, as the case may be, to be amended to his satisfaction before he proceeds with the application or refuse the application on failure to do so."

Amendment
of section 17.

13. In section 17 of the principal Act, for sub-section (2), the following sub-section shall be substituted, namely:—

"(2) Where an application or specification (including drawings) or any other document is required to be amended under section 15, the application or specification or other document shall, if the Controller so directs, be deemed to have been made on the date on which the requirement is complied with or where the application or specification or other document is returned to the applicant, on the date on which it is refiled after complying with the requirement."

Amendment
of section 21.

14. In section 21 of the principal Act,—

(a) in sub-section (1), for the portion beginning with the words "fifteen months" and ending with the words "of this section", the words "twelve months from the date on which the first statement of objections to the application or complete specification or other documents relating thereto is forwarded to the applicant by the Controller," shall be substituted;

(b) sub-section (2) shall be omitted;

(c) in sub-section (3),—

(i) for the words, brackets and figure "fifteen months specified in sub-section (1) or the extended period", the words "twelve months" shall be substituted;

(ii) for the words "fifteen months or the extended period, as the case may be", the words "twelve months" shall be substituted;

(d) in sub-section (4), for the words "fifteen months, or as the case may be, the extended period, until the expiration of", the words "twelve months to" shall be substituted.

15. In section 22 of the principal Act, in the proviso, for the words "eighteen months", the words "twelve months" shall be substituted.

Amendment
of section 22.

16. In section 23 of the principal Act, for the words "filed in pursuance thereof", the words "as accepted by the Controller along with other documents filed by the applicant in pursuance thereof" shall be substituted.

Amendment
of section 23.

17. In section 24C of the principal Act,—

Amendment
of section
24C.

(a) in clause (c), for the word and figures "section 85", the word and figures "section 84" shall be substituted;

(b) for clause (d), the following clause shall be substituted, namely:—

"(d) clause (e) of sub-section (7) of section 84 shall be omitted."

18. In section 25 of the principal Act,—

Amendment
of section 25.

(a) in sub-section (1), after clause (i), the following clauses shall be inserted, namely:—

"(j) that the complete specification does not disclose or wrongly mentions the source or geographical origin of biological material used for the invention;

(k) that the invention so far as claimed in any claim of the complete specification is anticipated having regard to the knowledge, oral or otherwise, available within any local or indigenous community in India or elsewhere,";

(b) in sub-section (2), for the words "shall give", the words "may, if so desired, give" shall be substituted;

(c) in sub-section (3), after the words "shall be taken of any", the words "personal document or secret trial or" shall be inserted.

19. In section 35 of the principal Act, in sub-section (1), the words "to any person or class of persons specified in the directions" shall be omitted.

Amendment
of section 35.

20. In section 36 of the principal Act, for sub-section (1), the following sub-section shall be substituted, namely:—

Amendment
of section 36.

"(1) The question whether an invention in respect of which directions have been given under section 35 continues to be relevant for defence purposes shall be reconsidered by the Central Government at intervals of twelve months or on a request made by the applicant which is found to be reasonable by the Controller and if, on such reconsideration it appears to the Central Government that the publication of the invention would no longer be prejudicial to the defence of India or in case of an application filed by a foreign applicant it is found that the invention is published outside India it shall forthwith give notice to the Controller to revoke the direction and the Controller shall thereupon revoke the directions previously given by him."

insertion of
new section
39.

Prohibition to
apply, under
certain
circum-
stances, for
patents
relevant for
defence
purposes, etc.

21. After section 38 of the principal Act, the following section shall be inserted, namely:—

“39. (1) No person shall, except under the authority of a written permit granted by or on behalf of the Controller, make or cause to be made any application outside India for the grant of a patent for an invention relevant for defence purposes or related to atomic energy unless—

(a) an application for a patent for the same invention has been made in India, not less than six weeks before the application outside India; and

(b) either no direction has been given under sub-section (1) of section 35 in relation to the application in India, or all such directions have been revoked.

(2) The Controller shall not grant written permission to any person to make any application outside India without the prior consent of the Central Government.

(3) This section shall not apply in relation to an invention for which an application for protection has first been filed in a country outside India by a person resident outside India.”

Amendment
of section 40.

22. In section 40 of the principal Act, after the words and figures “under section 35”, the words and figures “or makes or causes to be made an application for grant of a patent outside India in contravention of section 39” shall be inserted.

Amendment
of section 43.

23. In section 43 of the principal Act, in sub-section (1),—

(a) in clause (c), the word “or” shall be inserted at the end;

(b) after clause (c), the following clause shall be inserted, namely:—

“(d) the application has not been found to be in contravention of any of the provisions of the Act.”

Amendment
of section 45.

24. In section 45 of the principal Act, for sub-section (1), the following sub-section shall be substituted, namely:—

“(1) Subject to the other provisions contained in this Act, every patent shall be dated as of the date on which the application for patent was filed.”

Substitution
of new
section for
section 48.

25. For section 48 of the principal Act, the following section shall be substituted, namely:—

Rights of
patentees.

“48. Subject to the other provisions contained in this Act and the conditions specified in section 47, a patent granted under this Act shall confer upon the patentee—

(a) where the subject matter of the patent is a product, the exclusive right to prevent third parties, who do not have his consent, from the act of making, using, offering for sale, selling or importing for those purposes that product in India;

(b) where the subject matter of the patent is a process, the exclusive right to prevent third parties, who do not have his consent, from the act of using that process, and from the act of using, offering for sale, selling or importing for those purposes the product obtained directly by that process in India:

Provided that the product obtained is not a product in respect of which no patent shall be granted under this Act.”

Amendment
of section 50.

26. In section 50 of the principal Act, in sub-section (2), for the words “make, use, exercise and sell the patented invention”, the words and figures “the rights conferred by section 48” shall be substituted.

27. In section 53 of the principal Act,—

Amendment
of section 53.

(a) for sub-section (1), the following sub-section shall be substituted, namely:—

“(1) Subject to the provisions of this Act, the term of every patent granted, after the commencement of the Patents (Amendment) Act, 2002, and the term of every patent which has not expired and has not ceased to have effect, on the date of such commencement, under this Act, shall be twenty years from the date of filing of the application for the patent.”;

(b) after sub-section (3), the following sub-section shall be inserted, namely:—

“(4) Notwithstanding anything contained in any other law for the time being in force, on cessation of the patent right due to non-payment of renewal fee or on the expiry of the term of patent, the subject matter covered by the said patent shall not be entitled to any protection.”.

28. In section 57 of the principal Act,—

Amendment
of section 57.

(a) in sub-section (1), after the word “specification” at both the places where it occurs, the words “or any document relating thereto” shall be inserted;

(b) in sub-section (2), for the words “or a specification”, the words “or a complete specification or any document relating thereto” shall be substituted;

(c) for sub-section (3), the following sub-section shall be substituted, namely:—

“(3) Any application for leave to amend an application for a patent or a complete specification or a document relating thereto under this section made after the acceptance of the complete specification and the nature of the proposed amendment may be advertised in the Official Gazette if the amendment, in the opinion of the Controller, is substantive.”;

(d) in sub-section (6),—

(i) after the words “amend his specification”, the words “or any document relating thereto” shall be inserted;

(ii) after the words “acceptance of the complete specification”, the words “along with other documents filed by the applicant” shall be inserted.

29. In section 59 of the principal Act,—

Amendment
of section 59.

(i) for sub-section (1), the following sub-section shall be substituted, namely:—

“(1) No amendment of an application for a patent or a complete specification or any document relating thereto shall be made except by way of disclaimer, correction or explanation, and no amendment thereof shall be allowed, except for the purpose of incorporation of actual fact, and no amendment of a complete specification shall be allowed, the effect of which would be that the specification as amended would claim or describe matter not in substance disclosed or shown in the specification before the amendment, or that any claim of the specification as amended would not fall wholly within the scope of a claim of the specification before the amendment.”;

(ii) in sub-section (2),—

(a) for the words “complete specification, any amendment of the specification”, the words “complete specification along with other documents relating thereto, any amendment of the specification or any other document relating thereto” shall be substituted;

(b) in clause (a), for the word “specification”, the words “specification along with other documents relating thereto” shall be substituted;

(c) in clause (b), for the word “specification”, the words “specification or any other document relating thereto” shall be substituted.

Amendment
of section 60.

30. In section 60 of the principal Act,—

(a) in sub-section (1), for the words "one year", the words "eighteen months" shall be substituted;

(b) sub-section (2) shall be omitted.

Amendment
of section 64.

31. In section 64 of the principal Act,—

(a) in sub-section (1),—

(i) the proviso to clause (b) shall be omitted;

(ii) the proviso to clause (e) shall be omitted;

(iii) the proviso to clause (f) shall be omitted;

(iv) in clause (n), after the words and figures "under section 35", the words and figures "or made or caused to be made an application for the grant of a patent outside India in contravention of section 39" shall be inserted;

(v) after clause (o), the following clauses shall be inserted, namely:—

"(p) that the complete specification does not disclose or wrongly mentions the source or geographical origin of biological material used for the invention;

(q) that the invention so far as claimed in any claim of the complete specification was anticipated having regard to the knowledge, oral or otherwise, available within any local or indigenous community in India or elsewhere.";

(b) in sub-section (2), in clause (a), for the words "secret use", the words "personal document or secret trial or secret use" shall be substituted.

Amendment
of section 67.

32. In section 67 of the principal Act, for sub-section (4), the following sub-sections shall be substituted, namely:—

"(4) Notwithstanding anything contained in sub-section (1), it shall be lawful for the Controller to keep the register of patents or any part thereof in computer floppies, diskettes or any other electronic form subject to such safeguards as may be prescribed.

(5) Notwithstanding anything contained in the Indian Evidence Act, 1872, a copy of, or extracts from, the register of patents, certified to be a true copy under the hand of the Controller or any officer duly authorised by the Controller in this behalf shall, in all legal proceedings, be admissible in evidence. 1 of 1872.

(6) In the event the register is kept wholly or partly in computer floppies, diskettes or any other electronic form,—

(a) reference in this Act to an entry in the register shall be deemed to include reference to a record of particulars kept in computer floppies, diskettes or any other electronic form and comprising the register or part of the register;

(b) references in this Act to particulars being registered or entered in the register shall be deemed to include references to the keeping of record of those particulars comprising the register or part of the register in computer floppies, diskettes or any other electronic form; and

(c) references in this Act to the rectification of the register are to be read as including references to the rectification of the record of particulars kept in computer floppies, diskettes or any other electronic form and comprising the register or part of the register."

33. In section 68 of the principal Act, for the words "the Controller within six months from the commencement of this Act or the execution of the document, whichever is later or within such further period", the words "the Controller within six months from the execution of the document or within such further period" shall be substituted.

Amendment
of section 68.

34. In section 72 of the principal Act, after sub-section (2), the following sub-section shall be inserted, namely:—

Amendment
of section 72.

"(3) If the record of particulars is kept in computer floppies or diskettes or in any other electronic form, sub-sections (1) and (2) shall be deemed to have been complied with if the public is given access to such computer floppies, diskettes or any other electronic form or printouts of such record of particulars for inspection."

43 of 1958.
47 of 1999.

35. In section 73 of the principal Act, in sub-section (1), for the words and figures "section 4 of the Trade and Merchandise Marks Act, 1958", the words and figures "section 3 of the Trade Marks Act, 1999" shall be substituted.

Amendment
of section 73.

36. In section 76 of the principal Act,—

Amendment
of section 76.

(a) for the words "Central Government", the words "Central Government or Appellate Board" shall be substituted;

2 of 1911.

(b) in clauses (a) and (b), the words and figures "or under the Indian Patents and Designs Act, 1911" shall respectively be omitted.

37. In section 78 of the principal Act, in sub-section (1), after the words "complete specifications", the words "or other documents relating thereto" shall be inserted.

Amendment
of section 78.

38. In section 80 of the principal Act, the following proviso shall be inserted at the end, namely:—

Amendment
of section 80.

"Provided that the party desiring a hearing makes the request for such hearing to the Controller at least ten days in advance of the expiry of the time-limit specified in respect of the proceeding."

39. For Chapter XVI of the principal Act, the following Chapter shall be substituted, namely:—

Substitution of
new Chapter
for Chapter
XVI.

'CHAPTER XVI

WORKING OF PATENTS, COMPULSORY LICENCES AND REVOCATION

82. In this Chapter, unless the context otherwise requires,—

Definitions of
"patented
articles" and
"patentee".

(a) "patented article" includes any article made by a patented process;
and

(b) "patentee" includes an exclusive licensee.

83. Without prejudice to the other provisions contained in this Act, in exercising the powers conferred by this Chapter, regard shall be had to the following general considerations, namely:—

General
principles
applicable to
working of
patented
inventions.

(a) that patents are granted to encourage inventions and to secure that the inventions are worked in India on a commercial scale and to the fullest extent that is reasonably practicable without undue delay;

(b) that they are not granted merely to enable patentees to enjoy a monopoly for the importation of the patented article;

(c) that the protection and enforcement of patent rights contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations;

(d) that patents granted do not impede protection of public health and nutrition and should act as instrument to promote public interest specially in sectors of vital importance for socio-economic and technological development of India;

(e) that patents granted do not in any way prohibit Central Government in taking measures to protect public health;

(f) that the patent right is not abused by the patentee or person deriving title or interest on patent from the patentee, and the patentee or a person deriving title or interest on patent from the patentee does not resort to practices which unreasonably restrain trade or adversely affect the international transfer of technology; and

(g) that patents are granted to make the benefit of the patented invention available at reasonably affordable prices to the public.

Compulsory
licences.

84. (1) At any time after the expiration of three years from the date of the sealing of a patent, any person interested may make an application to the Controller for grant of compulsory licence on patent on any of the following grounds, namely:—

(a) that the reasonable requirements of the public with respect to the patented invention have not been satisfied, or

(b) that the patented invention is not available to the public at a reasonably affordable price, or

(c) that the patented invention is not worked in the territory of India.

(2) An application under this section may be made by any person notwithstanding that he is already the holder of a licence under the patent and no person shall be estopped from alleging that the reasonable requirements of the public with respect to the patented invention are not satisfied or that the patented invention is not worked in the territory of India or that the patented invention is not available to the public at a reasonably affordable price by reason of any admission made by him, whether in such a licence or otherwise or by reason of his having accepted such a licence.

(3) Every application under sub-section (1) shall contain a statement setting out the nature of the applicant's interest together with such particulars as may be prescribed and the facts upon which the application is based.

(4) The Controller, if satisfied that the reasonable requirements of the public with respect to the patented invention have not been satisfied or that the patented invention is not worked in the territory of India or that the patented invention is not available to the public at a reasonably affordable price, may grant a licence upon such terms as he may deem fit.

(5) Where the Controller directs the patentee to grant a licence he may, as incidental thereto, exercise the powers set out in section 88.

(6) In considering the application filed under this section, the Controller shall take into account,—

(i) the nature of the invention, the time which has elapsed since the sealing of the patent and the measures already taken by the patentee or any licensee to make full use of the invention;

(ii) the ability of the applicant to work the invention to the public advantage;

(iii) the capacity of the applicant to undertake the risk in providing capital and working the invention, if the application were granted;

(iv) as to whether the applicant has made efforts to obtain a licence from the patentee on reasonable terms and conditions and such efforts have not been successful within a reasonable period as the Controller may deem fit.

Provided that this clause shall not be applicable in case of national emergency or other circumstances of extreme urgency or in case of public non-commercial use or on establishment of a ground of anti-competitive practices adopted by the patentee,

but shall not be required to take into account matters subsequent to the making of the application.

(7) For the purposes of this Chapter, the reasonable requirements of the public shall be deemed not to have been satisfied—

(a) if, by reason of the refusal of the patentee to grant a licence or licences on reasonable terms,—

(i) an existing trade or industry or the development thereof or the establishment of any new trade or industry in India or the trade or industry of any person or class of persons trading or manufacturing in India is prejudiced; or

(ii) the demand for the patented article has not been met to an adequate extent or on reasonable terms; or

(iii) a market for export of the patented article manufactured in India is not being supplied or developed; or

(iv) the establishment or development of commercial activities in India is prejudiced; or

(b) if, by reason of conditions imposed by the patentee upon the grant of licences under the patent or upon the purchase, hire or use of the patented article or process, the manufacture, use or sale of materials not protected by the patent, or the establishment or development of any trade or industry in India, is prejudiced; or

(c) if the patentee imposes a condition upon the grant of licences under the patent to provide exclusive grant back, prevention to challenges to the validity of patent or coercive package licensing, or

(d) if the patented invention is not being worked in the territory of India on a commercial scale to an adequate extent or is not being so worked to the fullest extent that is reasonably practicable, or

(e) if the working of the patented invention in the territory of India on a commercial scale is being prevented or hindered by the importation from abroad of the patented article by—

(i) the patentee or persons claiming under him; or

(ii) persons directly or indirectly purchasing from him; or

(iii) other persons against whom the patentee is not taking or has not taken proceedings for infringement.

85. (1) Where, in respect of a patent, a compulsory licence has been granted, the Central Government or any person interested may, after the expiration of two years from the date of the order granting the first compulsory licence, apply to the Controller for an order revoking the patent on the ground that the patented invention has not been worked in the territory of India or that reasonable requirements of the public with respect to the patented invention has not been satisfied or that the patented invention is not available to the public at a reasonably affordable price.

Revocation of patents by the Controller for non-working.

(2) Every application under sub-section (1) shall contain such particulars as may be prescribed, the facts upon which the application is based, and, in the case of an application other than by the Central Government, shall also set out the nature of the applicant's interest.

(3) The Controller, if satisfied that the reasonable requirements of the public with respect to the patented invention have not been satisfied or that patented invention has not been worked in the territory of India or that the patented invention is not available to the public at a reasonably affordable price, may make an order revoking the patent.

(4) Every application under sub-section (1) shall ordinarily be decided within one year of its being presented to the Controller.

Power of
Controller to
adjourn
applications
for compul-
sory licences,
etc., in
certain cases.

86. (1) Where an application under section 84 or section 85, as the case may be, is made on the grounds that the patented invention has not been worked in the territory of India or on the ground mentioned in clause (d) of sub-section (7) of section 84 and the Controller is satisfied that the time which has elapsed since the sealing of the patent has for any reason been insufficient to enable the invention to be worked on a commercial scale to an adequate extent or to enable the invention to be so worked to the fullest extent that is reasonably practicable, he may, by order, adjourn the further hearing of the application for such period not exceeding twelve months in the aggregate as appears to him to be sufficient for the invention to be so worked:

Provided that in any case where the patentee establishes that the reason why a patented invention could not be worked as aforesaid before the date of the application was due to any State or Central Act or any rule or regulation made thereunder or any order of the Government imposed otherwise than by way of a condition for the working of the invention in the territory of India or for the disposal of the patented articles or of the articles made by the process or by the use of the patented plant, machinery, or apparatus, then, the period of adjournment ordered under this sub-section shall be reckoned from the date on which the period during which the working of the invention was prevented by such Act, rule or regulation or order of Government as computed from the date of the application, expires.

(2) No adjournment under sub-section (1) shall be ordered unless the Controller is satisfied that the patentee has taken with promptitude adequate or reasonable steps to start the working of the invention in the territory of India on a commercial scale and to an adequate extent.

Procedure for
dealing with
applications
under
sections 84
and 85.

87. (1) Where the Controller is satisfied, upon consideration of an application under section 84, or section 85, that a *prima facie* case has been made out for the making of an order, he shall direct the applicant to serve copies of the application upon the patentee and any other person appearing from the register to be interested in the patent in respect of which the application is made, and shall advertise the application in the Official Gazette.

(2) The patentee or any other person desiring to oppose the application may, within such time as may be prescribed or within such further time as the Controller may on application (made either before or after the expiration of the prescribed time) allow, give to the Controller notice of opposition.

(3) Any such notice of opposition shall contain a statement setting out the grounds on which the application is opposed.

(4) Where any such notice of opposition is duly given, the Controller shall notify the applicant, and shall give to the applicant and the opponent an opportunity to be heard before deciding the case.

Powers of
Controller in
granting
compulsory
licences.

88. (1) Where the Controller is satisfied on an application made under section 84 that the manufacture, use or sale of materials not protected by the patent is prejudiced by reason of conditions imposed by the patentee upon the grant of licences under the patent, or upon the purchase, hire or use of the patented article or process, he may, subject to the provisions of that section, order the grant of licences under the patent to such customers of the applicant as he thinks fit as well as to the applicant.

(2) Where an application under section 84 is made by a person being the holder of a licence under the patent, the Controller may, if he makes an order for the grant of

a licence to the applicant, order the existing licence to be cancelled, or may, if he thinks fit, instead of making an order for the grant of a licence to the applicant, order the existing licence to be amended.

(3) Where two or more patents are held by the same patentee and an applicant for a compulsory licence establishes that the reasonable requirements of the public have not been satisfied with respect to some only of the said patents, then, if the Controller is satisfied that the applicant cannot efficiently or satisfactorily work the licence granted to him under those patents without infringing the other patents held by the patentee and if those patents involve important technical advancement of considerable economic significance in relation to the other patents, he may, by order, direct the grant of a licence in respect of the other patents also to enable the licensee to work the patent or patents in regard to which a licence is granted under section 84.

(4) Where the terms and conditions of a licence have been settled by the Controller, the licensee may, at any time after he has worked the invention on a commercial scale for a period of not less than twelve months, make an application to the Controller for the revision of the terms and conditions on the ground that the terms and conditions settled have proved to be more onerous than originally expected and that in consequence thereof the licensee is unable to work the invention except at a loss:

Provided that no such application shall be entertained a second time.

89. The powers of the Controller upon an application made under section 84 shall be exercised with a view to securing the following general purposes, that is to say,—

General purposes for granting compulsory licences.

(a) that patented inventions are worked on a commercial scale in the territory of India without undue delay and to the fullest extent that is reasonably practicable;

(b) that the interests of any person for the time being working or developing an invention in the territory of India under the protection of a patent are not unfairly prejudiced.

90. (1) In settling the terms and conditions of a licence under section 84, the Controller shall endeavour to secure—

Terms and conditions of compulsory licences.

(i) that the royalty and other remuneration, if any, reserved to the patentee or other person beneficially entitled to the patent, is reasonable, having regard to the nature of the invention, the expenditure incurred by the patentee in making the invention or in developing it and obtaining a patent and keeping it in force and other relevant factors;

(ii) that the patented invention is worked to the fullest extent by the person to whom the licence is granted and with reasonable profit to him;

(iii) that the patented articles are made available to the public at reasonably affordable prices;

(iv) that the licence granted is a non-exclusive licence;

(v) that the right of the licensee is non-assignable;

(vi) that the licence is for the balance term of the patent unless a shorter term is consistent with public interest;

(vii) that the licence is granted with a predominant purpose of supplying in Indian market and in the case of semi-conductor technology, the licence granted is to work the invention for public non-commercial use and in the case, the licence granted to remedy a practice determined after judicial or administrative process to be anti-competitive, licensee shall be permitted to export the patented product.

(2) No licence granted by the Controller shall authorise the licensee to import the patented article or an article or substance made by a patented process from abroad

where such importation would, but for such authorisation, constitute an infringement of the rights of the patentee.

(3) Notwithstanding anything contained in sub-section (2), the Central Government may, if in its opinion it is necessary so to do, in the public interest, direct the Controller at any time to authorise any licensee in respect of a patent to import the patented article or an article or substance made by a patented process from abroad (subject to such conditions as it considers necessary to impose relating among other matters to the royalty and other remuneration, if any, payable to the patentee, the quantum of import, the sale price of the imported article and the period of importation), and thereupon the Controller shall give effect to the directions.

Licensing of
related
patents.

91. (1) Notwithstanding anything contained in the other provisions of this Chapter, at any time after the sealing of a patent, any person who has the right to work any other patented invention either as patentee or as licensee thereof, exclusive or otherwise, may apply to the Controller for the grant of a licence of the first-mentioned patent on the ground that he is prevented or hindered without such licence from working the other invention efficiently or to the best advantage possible.

(2) No order under sub-section (1) shall be made unless the Controller is satisfied—

(i) that the applicant is able and willing to grant, or procure the grant to the patentee and his licensees if they so desire, of a licence in respect of the other invention on reasonable terms; and

(ii) that the other invention has made a substantial contribution to the establishment or development of commercial or industrial activities in the territory of India.

(3) When the Controller is satisfied that the conditions mentioned in sub-section (1) have been established by the applicant, he may make an order on such terms as he thinks fit granting a licence under the first-mentioned patent and a similar order under the other patent if so requested by the proprietor of the first-mentioned patent or his licensee:

Provided that the licence granted by the Controller shall be non-assignable except with the assignment of the respective patents.

(4) The provisions of sections 87, 88, 89 and 90 shall apply to licences granted under this section as they apply to licences granted under section 84.

Special
provision for
compulsory
licences on
notifications
by Central
Government.

92. (1) If the Central Government is satisfied, in respect of any patent in force in circumstances of national emergency or in circumstances of extreme urgency or in case of public non-commercial use, that it is necessary that compulsory licences should be granted at any time after the sealing thereof to work the invention, it may make a declaration to that effect, by notification in the Official Gazette, and thereupon the following provisions shall have effect, that is to say,—

(i) the Controller shall, on application made at any time after the notification by any person interested, grant to the applicant a licence under the patent on such terms and conditions as he thinks fit;

(ii) in settling the terms and conditions of a licence granted under this section, the Controller shall endeavour to secure that the articles manufactured under the patent shall be available to the public at the lowest prices consistent with the patentees deriving a reasonable advantage from their patent rights.

(2) The provisions of sections 83, 87, 88, 89 and 90 shall apply in relation to the grant of licences under this section as they apply in relation to the grant of licences under section 84.

(3) Notwithstanding anything contained in sub-section (2), where the Controller is satisfied on consideration of the application referred to in clause (i) of sub-section (1) that it is necessary in—

(i) a circumstance of national emergency; or

(ii) a circumstance of extreme urgency; or

(iii) a case of public non-commercial use,

which may arise or is required, as the case may be, including public health crises, relating to Acquired Immune Deficiency Syndrome, human immunodeficiency virus, tuberculosis, malaria or other epidemics, he shall not apply any procedure specified in section 87 in relation to that application for grant of licence under this section:

Provided that the Controller shall, as soon as may be practicable, inform the patentee of the patent relating to the application for such non-application of section 87.

93. Any order for the grant of a licence under this Chapter shall operate as if it were a deed granting a licence executed by the patentee and all other necessary parties embodying the terms and conditions, if any, settled by the Controller.

Order for licence to operate as a deed between parties concerned. Termination of compulsory licence.

94. (1) On an application made by the patentee or any other person deriving title or interest in the patent, a compulsory licence granted under section 84 may be terminated by the Controller, if and when the circumstances that gave rise to the grant thereof no longer exist and such circumstances are unlikely to recur:

Provided that the holder of the compulsory licence shall have the right to object to such termination.

(2) While considering an application under sub-section (1), the Controller shall take into account that the interest of the person who had previously been granted the licence is not unduly prejudiced.”

40. In section 99 of the principal Act, sub-section (2) shall be omitted.

Amendment of section 99.

41. In section 100 of the principal Act,—

Amendment of section 100.

(a) in sub-section (3), for the proviso, the following proviso shall be substituted, namely:—

“Provided that in case of any such use of any patent, the patentee shall be paid not more than adequate remuneration in the circumstances of each case, taking into account the economic value of the use of the patent.”;

(b) in sub-section (5), for the words “unless it appears to the Government that it would be contrary to the public interest so to do”, the words “except in case of national emergency or other circumstances of extreme urgency or for non-commercial use” shall be substituted;

(c) in sub-section (6), for the words “right to sell the goods”, the words “right to sell, on non-commercial basis, the goods” shall be substituted.

42. In section 101 of the principal Act,—

Amendment of section 101.

(a) in sub-section (1),—

(i) the words “, whether before or after the commencement of this Act,” shall be omitted;

(ii) the brackets and words “(including payments by way of minimum royalty)” shall be omitted;

(b) in sub-section (2), the brackets and words "(including payments by way of minimum royalty)" shall be omitted;

(c) in sub-section (3), in clause (b), the words "including payments by way of minimum royalty" shall be omitted.

Insertion of
new section
104A.

43. After section 104 of the principal Act, the following section shall be inserted, namely:—

Burden of
proof in case
of suits
concerning
infringement.

"104A. (1) In any suit for infringement of a patent, where the subject matter of patent is a process for obtaining a product, the court may direct the defendant to prove that the process used by him to obtain the product, identical to the product of the patented process, is different from the patented process if,—

(a) the subject matter of the patent is a process for obtaining a new product;

or

(b) there is a substantial likelihood that the identical product is made by the process, and the patentee or a person deriving title or interest in the patent from him, has been unable through reasonable efforts to determine the process actually used:

Provided that the patentee or a person deriving title or interest in the patent from him, first proves that the product is identical to the product directly obtained by the patented process.

(2) In considering whether a party has discharged the burden imposed upon him by sub-section (1), the court shall not require him to disclose any manufacturing or commercial secrets, if it appears to the court that it would be unreasonable to do so."

Insertion of
new section
107A.

Certain acts
not to be
considered as
infringement.

44. After section 107 of the principal Act, the following section shall be inserted, namely:—

"107A. For the purposes of this Act,—

(a) any act of making, constructing, using or selling a patented invention solely for uses reasonably relating to the development and submission of information required under any law for the time being in force, in India, or in a country other than India, that regulates the manufacture, construction, use or sale of any product;

(b) importation of patented products by any person from a person who is duly authorised by the patentee to sell or distribute the product,

shall not be considered as an infringement of patent rights."

Amendment
of section
108.

45. Section 108 of the principal Act shall be numbered as sub-section (1) thereof, and after sub-section (1) as so numbered, the following sub-section shall be inserted, namely:—

"(2) The court may also order that the goods which are found to be infringing and materials and implement, the predominant use of which is in the creation of infringing goods shall be seized, forfeited or destroyed, as the court deems fit under the circumstances of the case without payment of any compensation."

Omission of
section 112.

46. Section 112 of the principal Act shall be omitted.

Substitution
of new
Chapter for
Chapter XIX.

47. For Chapter XIX of the principal Act, the following Chapter shall be substituted, namely:—

"CHAPTER XIX

APPEALS TO THE APPELLATE BOARD

47 of 1999.

116. (1) Subject to the provisions of this Act, the Appellate Board established under section 83 of the Trade Marks Act, 1999 shall be the Appellate Board for the purposes of this Act and the said Appellate Board shall exercise the jurisdiction, power and authority conferred on it by or under this Act:

Appellate Board.

Provided that the Technical Member of the Appellate Board for the purposes of this Act shall have the qualifications specified in sub-section (2).

(2) A person shall not be qualified for appointment as a Technical Member for the purposes of this Act unless he—

(a) has, at least five years, held the post of Controller under this Act or has exercised the functions of the Controller under this Act for at least five years; or

(b) has, for at least ten, years functioned as a registered patent agent and possesses a degree in engineering or technology or a masters degree in science from any University established under law for the time being in force or equivalent; or

(c) has, for at least ten years, been an advocate of a proven specialised experience in practising law relating to patents and designs.

117. (1) The Central Government shall determine the nature and categories of the officers and other employees required to assist the Appellate Board in the discharge of its functions under this Act and provide the Appellate Board with such officers and other employees as it may think fit.

Staff of Appellate Board.

(2) The salaries and allowances and conditions of service of the officers and other employees of the Appellate Board shall be such as may be prescribed.

(3) The officers and other employees of the Appellate Board shall discharge their functions under the general superintendence of the Chairman of the Appellate Board in the manner as may be prescribed.

117A. (1) Save as otherwise expressly provided in sub-section (2), no appeal shall lie from any decision, order or direction made or issued under this Act by the Central Government, or from any act or order of the Controller for the purpose of giving effect to any such decision, order or direction.

Appeals to Appellate Board.

(2) An appeal shall lie to the Appellate Board from any decision, order or direction of the Controller or Central Government under section 15, section 16, section 17, section 18, section 19, section 20, section 25, section 27, section 28, section 51, section 54, section 57, section 60, section 61, section 63, section 66, sub-section (3) of section 69, section 78, sub-sections (1) to (5) of section 84, section 85, section 88, section 91, section 92 and section 94.

(3) Every appeal under this section shall be in the prescribed form and shall be verified in such manner as may be prescribed and shall be accompanied by a copy of the decision, order or direction appealed against and by such fees as may be prescribed.

(4) Every appeal shall be made within three months from the date of the decision, order or direction, as the case may be, of the Controller or the Central Government or within such further time as the Appellate Board may, in accordance with the rules made by it, allow.

47 of 1999.

117B. The provisions of sub-sections (2) to (6) of section 84, section 87, section 92, section 95 and section 96 of the Trade Marks Act, 1999 shall apply to the Appellate Board in the discharge of its functions under this Act as they apply to it in the discharge of its functions under the Trade Marks Act, 1999.

Procedure and powers of Appellate Board.

Bar of jurisdiction of courts, etc.

117C. No court or other authority shall have or, be entitled to, exercise any jurisdiction, powers or authority in relation to the matters referred to in sub-section (2) of section 117A or section 117D.

Procedure for application for rectification, etc., before Appellate Board.

117D. (1) An application for rectification of the register made to the Appellate Board under section 71 shall be in such form as may be prescribed.

(2) A certified copy of every order or judgment of the Appellate Board relating to a patent under this Act shall be communicated to the Controller by the Board and the Controller shall give effect to the order of the Board and shall, when so directed, amend the entries in, or rectify, the register in accordance with such order.

Appearance of Controller in legal proceedings.

117E. (1) The Controller shall have the right to appear and be heard—

(a) in any legal proceedings before the Appellate Board in which the relief sought includes alteration or rectification of the register or in which any question relating to the practice of the patent office is raised;

(b) in any appeal to the Appellate Board from an order of the Controller on an application for grant of a patent—

(i) which is not opposed, and the application is either refused by the Controller or is accepted by him subject to any amendments, modifications, conditions or limitations, or

(ii) which has been opposed and the Controller considers that his appearance is necessary in the public interest,

and the Controller shall appear in any case if so directed by the Appellate Board.

(2) Unless the Appellate Board otherwise directs, the Controller may, in lieu of appearing, submit a statement in writing signed by him, giving such particulars as he thinks proper of the proceedings before him relating to the matter in issue or of the grounds of any decision given by him or of the practice of the patent office in like cases, or of other matters relevant to the issues and within his knowledge as the Controller may deem it necessary, and such statement shall be evidence in the proceeding.

Costs of Controller in proceedings before Appellate Board.

117F. In all proceedings under this Act before the Appellate Board, the costs of the Controller shall be in the discretion of the Board, but the Controller shall not be ordered to pay the costs of any of the parties.

Transfer of pending proceedings to Appellate Board.

117G. All cases of appeals against any order or decision of the Controller and all cases pertaining to rectification of register, pending before any High Court, shall be transferred to the Appellate Board from such date as may be notified by the Central Government in the Official Gazette and the Appellate Board may proceed with the matter either *de novo* or from the stage it was so transferred.

Power of Appellate Board to make rules.

117H. The Appellate Board may make rules consistent with this Act as to the conduct and procedure in respect of all proceedings before it under this Act."

Amendment of section 118.

48. In section 118 of the principal Act, after the words and figures "under section 35", the words and figures "or makes or causes to be made an application for the grant of a patent in contravention of section 39" shall be inserted.

Amendment of section 120.

49. In section 120 of the principal Act, for the words "five hundred rupees", the words "ten thousand rupees" shall be substituted.

Amendment of section 122.

50. In section 122 of the principal Act, in sub-section (1), for the words "one thousand rupees", the words "twenty thousand rupees" shall be substituted.

51. In section 123 of the principal Act,—

Amendment
of section
123.

(a) for the words “five hundred rupees”, the words “ten thousand rupees” shall be substituted;

(b) for the words “two thousand rupees”, the words “forty thousand rupees” shall be substituted.

52. For section 125 of the principal Act, the following section shall be substituted, namely:—

Substitution
of new
section for
section 125.

“125. (1) The Controller shall maintain a register to be called the register of patent agents in which shall be entered the names, addresses and other relevant particulars, as may be prescribed, of all persons qualified to have their names so entered under section 126.

Register of
patent agents.

(2) Notwithstanding anything contained in sub-section (1), it shall be lawful for the Controller to keep the register of patent agents in computer floppies, diskettes or any other electronic form subject to such safeguards as may be prescribed.”

53. In section 126 of the principal Act,—

Amendment
of section
126.

(a) in sub-section (1),—

(i) in clause (c),—

(A) for the words “degree from any University”, the words “degree in science, engineering or technology from any University established under law for the time being in force” shall be substituted;

(B) in sub-clause (ii), the word “or” shall be inserted at the end;

(ii) after sub-clause (ii), the following sub-clause shall be inserted, namely:—

“(iii) has, for a total period of not less than ten years, functioned either as an examiner or discharged the functions of the Controller under section 73 or both, but ceased to hold any such capacity at the time of making the application for registration;”;

(b) for sub-section (2), the following sub-section shall be substituted, namely:—

“(2) Notwithstanding anything contained in sub-section (1), a person who has been registered as a patent agent before the commencement of the Patents (Amendment) Act, 2002 shall be entitled to continue to be, or when required to be re-registered, as a patent agent, on payment of the fees as may be prescribed.”

54. In section 128 of the principal Act,—

Amendment
of section
128.

(a) in sub-section (1), the words “Subject to the provisions contained in sub-section (2) and to any rules made under this Act,” shall be omitted;

(b) sub-section (2) shall be omitted.

55. In section 130 of the principal Act,—

Amendment
of section
130.

(a) for the words “Central Government” wherever they occur, the word “Controller” shall be substituted;

(b) in sub-section (1), for the word “it” at both the places where it occurs, the word “he” shall be substituted.

56. In section 132 of the principal Act,—

Amendment
of section 132.

(a) in clause (a), the words "or any person, not being a patent agent, who is duly authorised by the applicant" shall be omitted;

(b) in clause (b), for the words "proceedings under this Act, otherwise than by way of drafting any specification", the words "hearing before the Controller on behalf of a party who is taking part in any proceeding under this Act" shall be substituted.

Amendment
of section
133.

57. In section 133 of the principal Act, the following *Explanation* shall be inserted at the end, namely:—

Explanation.—For the purposes of this Chapter "country" includes a group or union of countries or Inter-governmental organisation.

Amendment
of section
138.

58. In section 138 of the principal Act,—

(a) in sub-section (1), after the words "shall furnish," the words "when required by the Controller," shall be inserted;

(b) in sub-section (2), for the words "annexed to the specification or document", the words "furnished when required by the Controller" shall be substituted;

(c) after sub-section (3), the following sub-sections shall be inserted, namely:—

"(4) An international application filed under the Patent Cooperation Treaty designating India shall have effect of filing an application for patent under section 7, section 54 and section 135, as the case may be, and the title, description, claim and abstract and drawings, if any, filed in the international application shall be taken as complete specification for the purposes of this Act.

(5) The filing date of an application for patent and its complete specification processed by the patent office as designated office shall be the international filing date accorded under the Patent Cooperation Treaty.

(6) Amendment, if any, proposed by the applicant for an international application designating India or designating and electing India before international searching authority or preliminary examination authority shall, if the applicant so desires, be taken as an amendment made before the patent office."

Amendment
of section
140.

59. In section 140 of the principal Act,—

(a) in sub-section (1), in clause (iii), after sub-clause (c), the following sub-clause shall be inserted, namely:—

"(d) to provide exclusive grant back, prevention to challenges to validity of patent and coercive package licensing,";

(b) sub-section (5) shall be omitted.

Amendment
of section
141.

60. In section 141 of the principal Act, in sub-section (1), the words "whether made before or after the commencement of this Act," shall be omitted.

Amendment
of section
142.

61. In section 142 of the principal Act,—

(a) for sub-section (3), the following sub-section shall be substituted, namely:—

"(3) Where a fee is payable in respect of the filing of a document at the patent office, the fee shall be paid along with the document or within the prescribed time and the document shall be deemed not to have been filed at the office if the fee has not been paid within such time.";

(b) in sub-section (4), the words "or within the extended period not later than nine months from the date of recording" shall be inserted at the end.

62. In section 143 of the principal Act, for the words "or be open to public inspection at any time before the date of advertisement of acceptance of the application", the words "before eighteen months from the date of application or the priority date of the application or before the same is open to public inspection" shall be substituted.

Amendment
of section
143.

63. For section 157A of the principal Act, the following section shall be substituted, namely:—

Substitution
of new
section for
section 157A.

'157A. Notwithstanding anything contained in this Act, the Central Government shall—

Protection of
security of
India.

(a) not disclose any information relating to any patentable invention or any application relating to the grant of patent under this Act, which it considers prejudicial to the interest of the security of India;

(b) take any action including the revocation of any patent which it considers necessary in the interest of the security of India by issue of a notification in the Official Gazette to that effect.

Explanation.—For the purposes of this section, the expression "security of India" includes any action necessary for the security of India which—

(i) relates to fissionable materials or the materials from which they are derived; or

(ii) relates to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials as is carried on directly or indirectly for the purpose of supplying a military establishment; or

(iii) is taken in time of war or other emergency in international relations."

64. In section 159 of the principal Act, in sub-section (2),—

Amendment
of section
159.

(a) after clause (i), the following clauses shall be inserted, namely:—

"(ia) the details to be furnished by the applicant under sub-section (2) of section 8;

(ib) the manner of making the request for examination of an application for patent under sub-sections (1), (2) and (3) of section 11B;";

(b) in clause (iii), after the word "manner", the words "and time" shall be inserted;

(c) in clause (ix), after the word "patents", the words "and the safeguards to be observed in the maintenance of such register in computer floppies, diskettes or any other electronic form" shall be inserted;

(d) after clause (xii), the following clauses shall be inserted, namely:—

"(xiia) the salaries and allowances and other conditions of service of the officers and other employees of the Appellate Board under sub-section (2), and the manner in which the officers and other employees of the Appellate Board shall discharge their functions under sub-section (3), of section 117;

(xiib) the form of making an appeal, the manner of verification and the fees payable under sub-section (3) of section 117A;

(xiic) the form in which, and the particulars to be included in, the application to the Appellate Board under sub-section (1) of section 117D;";

(e) in clause (xiv), after the word "maintained", the words, brackets and figures "under sub-section (1) of section 125 and the safeguards to be observed in the

Omission of
section 161.

maintenance of such register of patent agents on computer floppies, diskettes or any other electronic form under sub-section (2) of that section" shall be inserted.

65. Section 161 of the principal Act shall be omitted.

Amendment
of section
162.

66. In section 162 of the principal Act, sub-sections (2) and (3) shall be omitted.

Sd/-

Dr. SUBHASH C. JAIN,

Secretary to the Government of India.

By order and in the name of the Governor of Gujarat,

V. M. KOTHARE,

Secretary to Government.

Government Central Press, Gandhinagar.



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PART - VI

Acts of Parliament and Ordinances Promulgated by the President LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT

Sachivalaya, Gandhinagar, 27th November, 2002.

No. : RPB/61/2002/ACT-4202/E : The following Act of Parliament is republished for general information :-

GOVERNMENT OF INDIA

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS,

(Legislative Department),

New Delhi, the 10th August, 2002/Sravana 19, 1924 (Saka)

The following Act of Parliament received the assent of the President on the 9th August, 2002 and is hereby published for general information :-

THE INSURANCE (AMENDMENT) ACT, 2002

AN ACT

(Act No. 42 of 2002)

(9th August, 2002)

further to amend the Insurance Act, 1938.

BE it enacted by Parliament in the Fifty-third Year of the Republic of India as follows:—

1. (1) This Act may be called the Insurance (Amendment) Act, 2002.

Short title and
commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:

Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

4 of 1938.

2. In section 2 of the Insurance Act, 1938 (hereinafter referred to as the principal Act),—

Amendment
of section 2.

(a) in clause (1), for the words "qualifications as may be prescribed", the words "qualifications as may be specified by the regulations made by the Authority" shall be substituted;

(b) in clause (3), sub-clause (v) shall be omitted;

(c) after clause (8), the following clause shall be inserted, namely:—

'(8A) "insurance co-operative society" means any insurer being a co-operative society,—

(a) which is registered on or after the commencement of the Insurance (Amendment) Act, 2002, as a co-operative society under the Co-operative Societies Act, 1912 or under any other law for the time being in force in any State relating to co-operative societies or under the Multi-State Co-operative Societies Act, 1984; 2 of 1912.
51 of 1984.

(b) having a minimum paid-up capital (excluding the deposits required to be made under section 7) of rupees one hundred crores;

(c) in which no body corporate, whether incorporated or not, formed or registered outside India, either by itself or through its subsidiaries or nominees, at any time, holds more than twenty-six per cent. of the capital of such co-operative society;

(d) whose sole purpose is to carry on life insurance business or general insurance business in India;—

(d) after clause (10A), the following clause shall be inserted, namely:—

'(10B) "intermediary or insurance intermediary" shall have the meaning assigned to it in clause (f) of sub-section (1) of section 2 of the Insurance Regulatory and Development Authority Act, 1999.' 41 of 1999.

Amendment
of section 2C.

3. In section 2C of the principal Act, after sub-section (2), the following sub-section shall be inserted at the end, namely:—

"(3) Notwithstanding anything contained in sub-section (1), an insurance co-operative society may carry on any class of insurance business in India under this Act on or after the commencement of the Insurance (Amendment) Act, 2002."

Amendment
of section 15.

4. In section 15 of the principal Act, in sub-section (1), for the portion beginning with the words "to the Authority in the case of the accounts and statements" and ending with the words "from the end of the period to which they refer", the words "to the Authority within six months from the end of the period to which they refer" shall be substituted.

Amendment
of section
28A.

5. In section 28A of the principal Act, for the words "in the prescribed form" at both the places where they occur, the words ", in the form specified by the regulations made by the Authority," shall be substituted.

Amendment
of section 28B.

6. In section 28B of the principal Act, for the words "in the prescribed form" at both the places where they occur, the words ", in the form specified by the regulations made by the Authority," shall be substituted.

Amendment of
section 31B.

7. In section 31B of the principal Act, in sub-section (2), for the words "the sum of five thousand rupees in that year", the words "such sum as may be specified by the regulations made by the Authority" shall be substituted.

Amendment
of section 40.

8. In section 40 of the principal Act,—

(a) in sub-section (1), for the words "except an insurance agent or a principal, chief or special agent", the words "except an insurance agent or an intermediary or insurance intermediary" shall be substituted;

(b) in sub-section (2A), for the words "no insurance agent", the words "no insurance agent or intermediary or insurance intermediary" shall be substituted.

Amendment
of section 42.

9. In section 42 of the principal Act,—

(a) in sub-section (3), for the brackets and letter "(e)", the brackets and letters "(e), (ea)" shall be substituted;

(b) in sub-section (4),—

(i) in clause (e), for the words "that he does not possess", the words "that in the case of an individual, he does not possess" shall be substituted;

(ii) after clause (e), the following clause shall be inserted, namely:—

"(ea) that in the case of a company or firm making an application under sub-section (1) or sub-section (3), a director or a partner or one or more of its officers or other employees so designated by it and in the case of any other person, the chief executive, by whatever name called, or one or more of his employees designated by him, do not possess the requisite qualifications and practical training and have not passed such an examination as required under clauses (e) and (f);".

10. In section 42A of the principal Act, after sub-section (8), the following sub-section shall be inserted at the end, namely:—

Amendment of section 42A.

"(9) No insurer shall, on or after the commencement of the Insurance (Amendment) Act, 2002, appoint or transact any insurance business in India through any principal agent, chief agent or special agent."

11. After section 42D of the principal Act, the following section shall be inserted, namely:—

Insertion of new section 42E.

"42E. (1) No intermediary or insurance intermediary shall be paid or contract to be paid by way of commission, fee or as remuneration in any form, an amount exceeding thirty per cent. of the premium payable as may be specified by the regulations made by the Authority, in respect of any policy or policies effected through him:

Commission, brokerage or fee payable to intermediary or insurance intermediary.

Provided that the Authority may specify different amounts payable by way of commission, fee or as remuneration to an intermediary or insurance intermediary or different classes of business of insurance.

(2) Without prejudice to the provisions contained in this Act, the Authority may, by the regulations made in this behalf, specify the requirements of capital, form of business and other conditions to act as an intermediary or insurance intermediary."

12. In section 49 of the principal Act,—

Amendment of section 49.

(a) in sub-section (1),—

(i) for the words and figure "balance sheet in Form I as set forth in the Fourth Schedule", the words "balance-sheet in such form as may be specified by the regulations made by the Authority" shall be substituted;

(ii) for the second proviso, the following proviso shall be substituted, namely:—

"Provided further that the share of any such surplus allocated to or reserved for the shareholders (including any amount for the payment of dividends guaranteed to them, whether by way of first charge or otherwise) shall not exceed such sums as may be specified by the Authority and such share shall in no case exceed ten per cent. of such surplus in case of participating policies and in other cases the whole thereof."

(b) in sub-section (2), for the words, figures and brackets "paragraph 8(1) of the abstract prepared in accordance with Part II of the Fourth Schedule to this Act", the words, brackets and figures "an abstract of the report of the actuary referred to in sub-section (1) of section 13" shall be substituted.

13. In section 64VB of the principal Act, after sub-section (5), the following sub-section shall be inserted at the end, namely:—

Amendment of section 64VB.

"(6) The Authority may, from time to time, specify, by the regulations made by it, the manner of receipt of premium by the insurer."

Insertion of
new Part IIIA.

14. After Part III of the principal Act, the following Part shall be inserted, namely:—

"PART IIIA

INSURANCE CO-OPERATIVE SOCIETIES

Insurance
co-operative
society to be
an insurer.

94A. (1) Every insurance co-operative society shall be deemed to be an insurer for the purposes of this Act.

(2) Save as otherwise provided in this Act, all the provisions applicable to an insurer being an Indian insurance company shall, so far as may be, apply to an insurance co-operative society:

Provided that the Authority may, by notification, direct that any of the provisions of this Act,—

(a) shall not apply to any insurance co-operative society; or

(b) shall apply to any insurance co-operative society only with such exceptions, modifications and adaptations as may be specified in the notification.

(3) A copy of every notification proposed to be issued under proviso to sub-section (2), shall be laid in draft before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in disapproving the issue of the notification or both Houses agree in making any modification in the notification, the notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by both the Houses."

Amendment of
section 101A.

15. In section 101A of the principal Act, in sub-section (8), for clause (ii), the following clause shall be substituted, namely:—

'(ii) "Indian re-insurer" means an Indian insurance company which has been granted a certificate of registration under sub-section (2A) of section 3 by the Authority to carry on exclusively the re-insurance business in India.'

Amendment
of section 114.

16. In section 114 of the principal Act, in sub-section (2), clause (a) shall be omitted.

Amendment
of section
114A.

17. In section 114A of the principal Act, in sub-section (2),—

(i) for clause (a), the following clauses shall be substituted, namely:—

"(a) the qualifications to be possessed by actuaries;

(aa) the matters including fee relating to the registration of insurers under section 3;";

(ii) in clause (g), for the words "fourth proviso", the words "fifth proviso" shall be substituted;

(iii) after clause (i), the following clauses shall be inserted, namely:—

"(ia) the form in which a return showing the investments made out of the controlled fund shall be submitted by an insurer carrying on life insurance business under sub-section (1) of section 28A;

(ib) the form in which a return showing all the changes that occurred in the investments shall be submitted by an insurer carrying on life insurance business under sub-section (2) of section 28A;

(ic) the form in which a return showing the investment made out of assets shall be submitted by an insurer carrying on general insurance business under sub-section (1) of section 28B;

(id) the form in which a return showing all the changes that occurred in the investments shall be submitted by an insurer carrying on general insurance business under sub-section (2) of section 28B;

(ie) the form of the statement and the sum to be specified under sub-section (2) of section 31B;";

(iv) after clause (v), the following clauses shall be inserted, namely:—

"(va) the amount of commission, fee or as remuneration in any form not exceeding thirty per cent. to be paid or contract to be paid under sub-section (1) of section 42E;

(vb) the requirements of capital, form of business and other conditions to act as an intermediary or insurance intermediary under sub-section (2) of section 42E;

(vc) the form of balance-sheet as may be specified by the Authority under sub-section (1) of section 49;";

(v) after clause (za), the following clause shall be inserted, namely:—

"(zb) the manner of receipt of premium to be specified under sub-section (6) of section 64VB."

18. The First Schedule, the Second Schedule, the Third Schedule and the Fourth Schedule to the principal Act shall be omitted. Omission of Schedules.

Sd/-

DR. SUBHASH C. JAIN,
Secy. to the Govt. of India.

By order and in the name of the Governor of Gujarat,

V. M. KOTHARE,
Secretary to Government.

GOVERNMENT CENTRAL PRESS, GANDHINAGAR.

VI - EX. 36-2



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PART - VI

Acts of Parliament and Ordinances Promulgated by the President LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT

Sachivalaya, Gandhinagar, 27th November, 2002.

No. : RPB/64/2002/ACT-4502/E : The following Act of Parliament is republished for general information :-

GOVERNMENT OF INDIA

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS,

(Legislative Department),

New Delhi, the 16th August, 2002/Sravana 25, 1924 (Saka)

The following Act of Parliament received the assent of the President on the 14th August, 2002 and is hereby published for general information :-

THE NATIONAL CO-OPERATIVE DEVELOPMENT CORPORATION (AMENDMENT) ACT, 2002

AN ACT

(Act No. 45 of 2002)

(14th August, 2002)

further to amend the National Co-operative Development Corporation Act, 1962.

Be it enacted by Parliament in the Fifty-third Year of the Republic of India as follows:—

1. (1) This Act may be called the National Co-operative Development Corporation (Amendment) Act, 2002.

Short title and
commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

26 of 1962.

2. In the National Co-operative Development Corporation Act, 1962 (hereinafter referred to as the principal Act), in the long title, for the words "and certain other commodities on co-operative principles and for matters connected therewith", the words "industrial goods, livestock, certain other commodities and services on co-operative principles and for matters connected therewith or incidental thereto" shall be substituted.

Amendment
of long title.

3. In section 2 of the principal Act,—

(i) for clause (a), the following clause shall be substituted, namely:—

Amendment
of section 2.

'(a) "agricultural produce" includes the following:—

(i) edible and non-edible oil seeds;

(ii) cattle feed, including oilcakes and other ingredients;

(iii) produce of horticulture and animal husbandry;

(iv) produce of forestry;

(v) produce of poultry farming;

(vi) produce of pisciculture; and

(vii) produce of other allied activities, whether or not undertaken jointly with agriculture;'

(ii) after clause (ab), the following clause shall be inserted, namely:—

'(aba) "Central financing institution" means Industrial Development Bank of India established under sub-section (1) of section 3 of the Industrial Development Bank of India Act, 1964 or the Industrial Finance Corporation of India Limited, a company formed and registered under the Companies Act, 1956, or the Industrial Credit and Investment Corporation of India Limited, a Company formed and registered under the Indian Companies Act, 1913;'

18 of 1964.

1 of 1956.

7 of 1913.

(iii) for clauses (b) and (c), the following clauses shall be substituted, namely:—

'(b) "Central Warehousing Corporation" means the Central Warehousing Corporation established under sub-section (1) of section 3 of the Warehousing Corporations Act, 1962;

58 of 1962.

(c) "co-operative society" means a society registered or deemed to be registered under the Co-operative Societies Act, 1912 or under the Multi-State Co-operative Societies Act, 1984 or under any other law with respect to co-operative societies for the time being in force in any State, which is engaged in any of the activities specified in sub-section (1) of section 9 and includes a Co-operative Land Development Bank, by whatever name called;'

2 of 1912.

51 of 1984.

(iv) after clause (db), the following clauses shall be inserted, namely:—

'(dba) "industrial goods" means the products of industrial co-operatives or cottage and village industries or products of allied industries in the rural area and includes any handicrafts or rural crafts;

(dbb) "livestock" includes all animals to be raised for milk, meat, fleece, skin, wool and other by-products;'

(v) for clause (dd), the following clause shall be substituted, namely:—

'(dd) "nationalised bank" means a corresponding new bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 or under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980;'

5 of 1970.

40 of 1980.

(vi) after clause (e), the following clause shall be inserted, namely:—

'(ea) "notified services" means any service which the Central Government may, by notification in the Official Gazette, declare to be notified services for the purposes of this Act;'

(vii) for clause (h), the following clauses shall be substituted, namely:—

'(h) "State Bank" means the State Bank of India constituted under the State Bank of India Act, 1955 or any of the subsidiary banks of the State Bank of India;

23 of 1955.

(ha) "State Co-operative Bank" has the same meaning as in the National Bank for Agriculture and Rural Development Act, 1981;'

61 of 1981.

4. In section 3 of the principal Act, in sub-section (4),—

Amendment
of section 3.

(i) for clauses (iii) and (iv), the following clause shall be substituted, namely:—

“(iii) Chairman of the National Bank of Agriculture and Rural Development constituted under the National Bank for Agriculture and Rural Development Act, 1981. *ex officio*.”;

61 of 1981.

(ii) for clause (vii), the following clause shall be substituted, namely.—

“(vii) one member to be nominated by the Central Government from amongst the chairmen of one of the Central financing institutions, *ex officio*.”;

(iii) in clause (xvii), for the words “three members”, the words “four members” shall be substituted.

5. In section 9 of the principal Act,—

Amendment
of section 9.

(i) in sub-section (1),—

(1) in the opening portion, for the words “plan and promote”, the words “plan, promote and finance” shall be substituted;

(2) after clause (b), the following clause shall be inserted, namely:—

“(c) development of notified services.”;

(ii) in sub-section (2),—

(1) in clause (b), for the words “and notified commodities”, the words “livestock, poultry feed, industrial goods, notified commodities and notified services” shall be substituted;

(2) in clause (e), the following proviso shall be inserted, namely:—

“Provided that no such guarantee shall be required in cases in which security to the satisfaction of the Corporation is furnished by the borrowing co-operative society.”;

6. After section 12A of the principal Act, the following section shall be inserted, namely:—

Insertion of
new section
12B.
Grants,
donations,
etc.

“12B. (1) The Corporation may receive gifts, grants, donations or benefactions from Government or any other agency in or outside India.

(2) The Corporation shall not receive any gifts, grants, donations or benefactions from a foreign government or any other agency outside India except with the previous approval of the Central Government.”.

7. In section 13 of the principal Act,—

Amendment
of section 13.

(i) in sub-section (1), after clause (b), the following clauses shall be inserted, namely:—

“(bb) all moneys received under section 12B;

“(bbb) all moneys received for services rendered.”;

(ii) for sub-section (3), the following sub-section shall be substituted, namely:—

“(3) All moneys in the Fund shall be deposited in the Reserve Bank or the State Bank or a nationalised bank or a scheduled bank or a State Co-operative Bank.”.

Sd/-

DR. SUBHASH C. JAIN
Secy. to the Govt. of India.

By Order and in the name of the Governor of Gujarat,

V. M. KOTHARE,
Secretary to Government.



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PART - VI

Acts of Parliament and Ordinances Promulgated by the President LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT

Sachivalaya, Gandhinagar, 28th November, 2002.

No. : RPB/43/2002/ACT-2402/E : The following Act of Parliament is republished for general information :-

GOVERNMENT OF INDIA

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS,

(Legislative Department),

New Delhi, the 27th May, 2002/Jyastha 6, 1924 (Saka)

The following Act of Parliament received the assent of the President on the 24th May, 2002 and is hereby published for general information :-

THE ALL INDIA INSTITUTE OF MEDICAL SCIENCES (AMENDMENT) ACT, 2002 AN ACT

(Act No. 24 of 2002)

(24th May, 2002)

further to amend the All-India Institute of Medical Sciences Act, 1956.

Be it enacted by Parliament in the Fifty-third Year of the Republic of India as follows:—

1. (1) This Act may be called the All-India Institute of Medical Sciences (Amendment) Act, 2002.

Short title
and
commence-
ment.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

25 of 1956.

2. For section 23 of the All-India Institute of Medical Sciences Act, 1956 (hereinafter referred to as the principal Act), the following section shall be substituted, namely:—

Substitution
of new
section for
section 23.

102 of 1956.
16 of 1948.
48 of 1947.

“23. Notwithstanding anything contained in the Indian Medical Council Act, 1956, the Dentists Act, 1948 and the Indian Nursing Council Act, 1947, the medical, dental or nursing degrees or diplomas, as the case may be, granted by the Institute under this Act shall be recognised—

Recognition
of medical,
dental and
nursing
qualifications
granted by
the Institute.

- (a) medical qualifications for the purpose of the Indian Medical Council Act, 1956 and shall be deemed to be included in the First Schedule to that Act; 102 of 1956.
- (b) dental qualifications for the purpose of the Dentists Act, 1948 and shall be deemed to be included in the Schedule to that Act; and 16 of 1948.
- (c) nursing qualifications for the purpose of the Indian Nursing Council Act, 1947 and shall be deemed to be included in the Schedule to that Act." 48 of 1947.

Substitution
of new
section for
section 24.

3. For section 24 of the principal Act, the following section shall be substituted, namely:—

Grant of
medical, dental
or nursing
degrees,
diplomas, etc.,
by the Institute.

"24. Notwithstanding anything contained in any other law for the time being in force, the Institute shall have power to grant medical, dental or nursing degrees, diplomas and other academic distinctions and titles under this Act."

Sd/-

Dr. SUBHASH C. JAIN,

Secretary to the Government of India.

By order and in the name of the Governor of Gujarat,

V. M. KOTHARE,

Secretary to Government.

Government Central Press, Gandhinagar.



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PART - VI

Acts of Parliament and Ordinances Promulgated by the President LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT

Sachivalaya, Gandhinagar, 28th November, 2002.

No. : RPB/44/2002/ACT-2502/E : The following Act of Parliament is republished for general information :-

GOVERNMENT OF INDIA

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS,

(Legislative Department),

New Delhi, the 27th May, 2002/Jyastha 6, 1924 (Saka)

The following Act of Parliament received the assent of the President on the 24th May, 2002 and is hereby published for general information :-

THE CONSTITUTION (SCHEDULED CASTES) ORDER, (AMENDMENT) ACT, 2002 AN ACT

(Act No. 25 of 2002)

(24th May, 2002)

further to amend the Constitution (Scheduled Castes) Order, 1950.

BE it enacted by Parliament in the Fifty-third Year of the Republic of India as follows:—

1. This Act may be called the Constitution (Scheduled Castes) Order (Amendment) Act, 2002. Short title.

2. The Schedule to the Constitution (Scheduled Castes) Order, 1950 is hereby amended in the manner and to the extent specified hereunder, namely:— Amendment of the Constitution (Scheduled Castes) Order, 1950.

(a) in PART XIII.—Orissa,—

(i) omit entry 22;

(ii) omit entry 90;

(iii) after entry 93, insert—

“94. Mangali (in Koraput and Kalahandi districts);

95. Mirgan (in Navrangpur district).”;

(b) in PART XIV.—*Punjab*,—

(i) for entry 9, substitute—

“9. Chamar, Jatia Chamar, Rehgar, Raigar, Ramdasi, Ravidasi, Ramdasia, Ramdasia Sikh, Ravidasia, Ravidasia Sikh.”;

(ii) after entry 37, insert—

“38. Mochi.”;

(c) in PART XIX.—*West Bengal*,—

(i) for entry 22, substitute—

“22. Hari, Mehtar, Mehtor, Bhangi, Balmiki.”;

(ii) after entry 59, insert—

“60. Chain (in Malda, Murshidabad, Nadia and Dakshin Dinajpur districts).”.

Sd/-

Dr. SUBHASH C. JAIN,

Secretary to the Government of India.

By order and in the name of the Governor of Gujarat,

V. M. KOTHARE,

Secretary to Government.

Government Central Press, Gandhinagar.



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LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT

Sachivalaya, Gandhinagar, 28th November, 2002.

No. : RPB/45/2002/ACT-2602/E : The following Act of Parliament is republished for general information :-

GOVERNMENT OF INDIA

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS,
(Legislative Department),

New Delhi, the 28th May, 2002/Jyastha 7, 1924 (Saka)

The following Act of Parliament received the assent of the President on the 27th May, 2002 and is hereby published for general information :-

THE INDIAN SUCCESSION (AMENDMENT) ACT, 2002
AN ACT

(Act No. 26 of 2002)

(27th May, 2002)

further to amend the Indian Succession Act, 1925.

BE it enacted by Parliament in the Fifty-third Year of the Republic of India as follows:—

1. This Act may be called the Indian Succession (Amendment) Act, 2002.

Short title.

39 of 1925.

2. In section 32 of the Indian Succession Act, 1925 (hereinafter referred to as the principal Act), the *Explanation* shall be omitted.

Amendment
of section 32.

3. In section 213 of the principal Act, in sub-section (2), after the word "Muhammadans", the words "or Indian Christians" shall be inserted.

Amendment
of section
213.

Sd/-

Dr. SUBHASH C. JAIN,
Secretary to the Government of India.

By order and in the name of the Governor of Gujarat,

V. M. KOTHARE,
Secretary to Government.

Government Central Press, Gandhinagar.



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LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT

Sachivalaya, Gandhinagar, 28th November, 2002.

No. : RPB/46/2002/ACT-2702/E : The following Act of Parliament is republished for general information :-

GOVERNMENT OF INDIA

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS,
(Legislative Department),

New Delhi, the 28th May, 2002/Jyastha 7, 1924 (Saka)

The following Act of Parliament received the assent of the President on the 27th May, 2002 and is hereby published for general information :-

**THE TEA DISTRICTS EMIGRANT LABOUR (REPEAL)
REPEALING ACT, 2002
AN ACT**

(Act No. 27 of 2002)

(27th May, 2002)

to repeal the Tea Districts Emigrant Labour (Repeal) Act, 1970.

BE it enacted by Parliament in the Fifty-third Year of the Republic of India as follows:—

1. This Act may be called the Tea Districts Emigrant Labour (Repeal) Repealing Act, 2002. Short title.

2. The Tea Districts Emigrant Labour (Repeal) Act, 1970 is hereby repealed.

Repeal of Act
50 of 1970.

Sd/-

Dr. SUBHASH C. JAIN,

Secretary to the Government of India.

By order and in the name of the Governor of Gujarat,

V. M. KOTHARE,

Secretary to Government.

Government Central Press, Gandhinagar.



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Acts of Parliament and Ordinances Promulgated by the President LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT

Sachivalaya, Gandhinagar, 28th November, 2002.

No. : RPB/47/2002/ACT-2802/E : The following Act of Parliament is republished for general information :-

GOVERNMENT OF INDIA

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS,

(Legislative Department),

New Delhi, the 28th May, 2002/Jyastha 7, 1924 (Saka)

The following Act of Parliament received the assent of the President on the 27th May, 2002 and is hereby published for general information :-

THE NATIONAL INSTITUTE OF PHARMACEUTICAL EDUCATION AND RESEARCH (AMENDMENT) ACT, 2002 AN ACT

(Act No. 28 of 2002)

(27th May, 2002)

to amend the National Institute of Pharmaceutical Education and Research Act, 1998.

BE it enacted by Parliament in the Fifty-third Year of the Republic of India as follows:—

1. This Act may be called the National Institute of Pharmaceutical Education and Research (Amendment) Act, 2002. Short title

2. In section 4 of the National Institute of Pharmaceutical Education and Research Act, 1998, in sub-section (4), the following proviso shall be inserted, namely:— Amendment of section 4 of Act 13 of 1998.

"Provided that the term of office of a member nominated under clause (o) of sub-section (3) shall come to an end as soon as he becomes a Minister or Minister of State or Deputy Minister, or the Speaker or the Deputy Speaker of the House of the People, or the Deputy Chairman of the Council of States, or ceases to be a member of the House from which he was nominated."

Sd/-

Dr. SUBHASH C. JAIN,
Secretary to the Government of India.

By order and in the name of the Governor of Gujarat,

V. M. KOTHARE,
Secretary to Government.

Government Central Press, Gandhinagar.



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LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT

Sachivalaya, Gandhinagar, 28th November, 2002.

No. : RPB/49/2002/ACT-3002/E : The following Act of Parliament is republished for general information :-

GOVERNMENT OF INDIA

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS,
(Legislative Department),

New Delhi, the 28th May, 2002/Jyastha 7, 1924 (Saka)

The following Act of Parliament received the assent of the President on the 27th May, 2002 and is hereby published for general information :-

THE SUGAR DEVELOPMENT FUND (AMENDMENT) ACT, 2002

(Act No. 30 of 2002)

AN ACT

(27th May, 2002)

further to amend the Sugar Development Fund Act, 1982.

BE it enacted by Parliament in the Fifty-third Year of the Republic of India as follows:—

1. (1) This Act may be called the Sugar Development Fund (Amendment) Act, 2002.
- (2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Short title and
commence-
ment.

2. In section 4 of the Sugar Development Fund Act, 1982, in sub-section (I),—

Amendment
of Act 4 of
1982.

(i) after clause (a), the following clauses shall be inserted, namely:—

“(aa) for making loans to any sugar factory or any unit thereof for bagasse-based co-generation power projects with a view to improving their viability;

(aaa) for making loans to any sugar factory or any unit thereof for production of anhydrous alcohol or ethanol from alcohol with a view to improving their viability;”;

(ii) after clause (bb), the following clause shall be inserted, namely:—

“(bbb) for defraying expenditure on internal transport and freight charges to the sugar factories on export shipments of sugar with a view to promoting its export;”.

Sd/-

Dr. SUBHASH C. JAIN,

Secretary to the Government of India.

By order and in the name of the Governor of Gujarat,

V. M. KOTHARE,

Secretary to Government.

Government Central Press, Gandhinagar.



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PART - VI

Acts of Parliament and Ordinances Promulgated by the President LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT

Sachivalaya, Gandhinagar, 28th November, 2002.

No. : RPB/54/2002/ACT-3502/E : The following Act of Parliament is republished for general information :-

GOVERNMENT OF INDIA

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS,

(Legislative Department),

New Delhi, the 12th June, 2002/Jyastha 22, 1924 (Saka)

The following Act of Parliament received the assent of the President on the 11th June, 2002 and is hereby published for general information :-

THE HAJ COMMITTEE ACT, 2002 AN ACT

(Act No. 35 of 2002)

(11th June, 2002)

to establish a Haj Committee of India and State Haj Committees for making arrangements for the pilgrimage of Muslims for Haj, and for matters connected therewith.

Be it enacted by Parliament in the Fifty-third Year of the Republic of India as follows:—

CHAPTER I PRELIMINARY

1. (1) This Act may be called the Haj Committee Act, 2002.

Short title and
commence-
ment.

(2) It shall come into force on such date or dates as the Central Government may, by notification, appoint, and different dates may be appointed for different provisions of this Act and for different States.

2. In this Act, unless the context otherwise requires,—

Definitions.

(a) "bye-laws" means the bye-laws made under section 45;

(b) "Chief Executive Officer or the Executive Officer" means the Chief Executive Officer of the Committee or the Executive Officer of the State Committee appointed under sub-section (1) of section 16 or sub-section (1) of section 29, as the case may be;

(c) "Committee" means the Haj Committee of India constituted under section 3;

(d) "member" means a member of the Haj Committee of India nominated under section 4 or of a State Haj Committee nominated under section 18, as the case may be, and includes the Chairperson and a Vice-Chairperson;

(e) "notification" means a notification published in the Gazette of India or the Official Gazette of a State, as the case may be;

(f) "pilgrim" means a Muslim proceeding to, or returning from, Haj;

(g) "prescribed" means prescribed by rules made under section 44 by the Central Government or, as the case may be, under section 47 by the State Government;

(h) "State Committee" means a State Haj Committee constituted under section 18 and includes Joint State Committee;

(i) "State Government", in relation to a Union territory, means the Administrator of that Union territory appointed by the President under article 239 of the Constitution.

CHAPTER II

HAJ COMMITTEE OF INDIA

Constitution
and incorpora-
tion of Haj
Committee of
India.

3. (1) With effect from such date as the Central Government may, by notification in the Official Gazette, appoint in this behalf, there shall be constituted a Committee by the name of the Haj Committee of India.

(2) The Committee shall be a body corporate, by the name aforesaid, having perpetual succession and a common seal with power, subject to the provisions of this Act, to acquire, hold and dispose of property, both movable and immovable, to create a charitable trust or endowment, and to contract and shall by the said name sue and be sued.

(3) The Committee shall have its headquarters at Mumbai and as and when the Committee considers it functionally necessary, additional regional offices may be opened in consultation with the Central Government.

Composition
of Committee.

4. The Committee shall consist of the following members, namely:—

(i) three members of Parliament of whom two are to be nominated by the Speaker of the House of the People from among its Muslim members, and one by the Chairman of the Council of States from among its Muslim members:

Provided that a member of Parliament shall, upon ceasing to be a member, cease to be a member of the Committee and the Speaker of the House of the People or the Chairman of the Council of States, as the case may be, shall make a fresh nomination upon request by the Central Government;

(ii) nine Muslim members of the Committee shall be elected, three from those States sending largest number of pilgrims during last three years and one each from the zones as specified in the Schedule, in such manner as may be prescribed:

Provided that not more than one member shall be elected from a State falling in the zone as specified in the Schedule;

(iii) four persons not below the rank of Joint Secretary to the Government of India nominated by that Government to represent the Ministries of External Affairs, Home, Finance and Civil Aviation, as *ex officio* members;

(iv) seven Muslim members shall be nominated by the Central Government from among the following categories of persons, namely:—

(a) two members who have special knowledge of public administration, finance, education, culture or social work and out of whom one shall be a Shia Muslim;

- (b) two women members, out of them one shall be Shia Muslim;
- (c) three members who have special knowledge of Muslim theology and law, out of them one shall be a Shia Muslim.

5. As soon as may be after the nomination of the members of the Committee under section 4, the Central Government shall publish in the Official Gazette the names of all such members.

Notification of members.

6. (1) The term of office of the members of the Committee (other than the *ex officio* members and members filling casual vacancies) shall be three years, commencing on the day following the publication of the list of members under section 5:

Term of office.

Provided that the term of the members of the Committee may be extended by the Central Government by a notification in the Official Gazette for a period not exceeding six months at a time but, in any case, not exceeding beyond a total period of one year.

(2) The allowances payable to, and the other terms and conditions of, the Chairperson, Vice-Chairpersons and members shall be such as may be prescribed.

7. (1) After the publication of the names of members of the Committee under section 5, the Central Government shall convene within forty-five days of such publication the first meeting of the Committee at which the Committee shall elect a Chairperson and two Vice-Chairpersons from amongst its members :

Chairperson and Vice-Chairpersons.

Provided that a Minister shall not be the Chairperson of the Committee and *ex officio* members shall not take part in the election of the Chairperson or of the Vice-Chairpersons.

(2) If the Committee fails to elect the Chairperson or the Vice-Chairpersons the Central Government may appoint a member of the Committee to be the Chairperson thereof or Vice-Chairpersons, as the case may be.

(3) The Chairperson shall exercise such powers and discharge such duties as may be prescribed.

(4) The Vice-Chairpersons shall exercise such powers and discharge such duties as may be determined by bye-laws made in this behalf by the Committee :

Provided that till such bye-laws are made, the Vice-Chairpersons shall exercise such powers and discharge such duties as may be determined by an order made by the Chairperson in this regard.

(5) The election of the Chairperson and the Vice-Chairpersons shall be notified by the Central Government in the Official Gazette.

(6) The term of office of the Chairperson and the Vice-Chairpersons, as the case may be, shall be co-terminus with the term of the Committee and no person shall hold office of the Chairperson or the Vice-Chairpersons, as the case may be, for more than two consecutive terms.

(7) Any casual vacancy in the office of the Chairperson or a Vice-Chairperson shall be filled for the remainder of the term in accordance with sub-section (1) or sub-section (2), as the case may be.

8. (1) The Central Government shall take or cause to be taken all necessary steps for the reconstitution of a new Committee at least four months before the expiry of the term, or the extended term, as the case may be, of the Committee.

Reconstitution of Committee.

(2) An outgoing member shall be eligible for renomination on the Committee for not more than two terms:

Provided that not more than fifty per cent. of the members may be renominated for a second term in such manner as may be prescribed.

9. (1) The duties of the Committee shall be—

Duties of Committee.

(i) to collect and disseminate information useful to pilgrims, and to arrange orientation and training programmes for pilgrims;

(ii) to advise and assist pilgrims during their stay at the embarkation points in India, while proceeding to or returning from pilgrimage, in all matters including vaccination, inoculation, medical inspection, issue of pilgrim passes and foreign exchange, and to liaise with the local authorities concerned in such matters;

(iii) to give relief to pilgrims in distress;

(iv) to finalise the annual Haj plan with the approval of the Central Government, and execute the plan, including the arrangements for travel by air or any other means, and to advise in matters relating to accommodations;

(v) to approve the budget estimates of the Committee and submit it to the Central Government at least three months before the beginning of the financial year for its concurrence;

(vi) to co-ordinate with the Central Government, railways, airways and travel agencies for the purpose of securing travelling facilities for pilgrims;

(vii) to generally look after the welfare of the pilgrims;

(viii) to publish such proceedings of the Committee and such matters of interest to pilgrims as may be determined by bye-laws made in this behalf by the Committee;

(ix) to discharge such other duties in connection with Haj as may be prescribed by the Central Government.

(2) The Central Government shall afford all reasonable assistance to the Committee in the discharge of the duties specified in sub-section (1).

Meetings of
Committee.

10. (1) The Committee shall meet at least three times in a year before the commencement of the Haj season to plan and make arrangements for Haj and once after that to review all arrangements made by the Committee.

(2) In addition to the meetings specified in sub-section (1), the Committee may hold meetings as and when requisitioned by at least one-third of its members or when considered necessary by the Chairperson.

(3) The number of members required to make a quorum at any meeting of the Committee shall be one-third of its members.

(4) All matters shall be decided by a majority of votes of the members present and, in the event of an equality of votes, the Chairperson or other person presiding shall have a casting vote.

(5) The Committee shall observe such rules of procedure in regard to the transaction of business at its meetings as may be determined by bye-laws.

Appointment
of Standing
Committees
and sub-
committees.

11. (1) The Committee shall appoint two Standing Committees, each headed by a Vice-Chairperson of the Committee, to deal with matters relating to finance and Haj arrangements, from amongst its members consisting of such number of members and with such powers and functions as may be determined by bye-laws made in this behalf by the Committee:

Provided that the Chairperson shall preside over the meeting of the Standing Committee in case he attends the meeting.

(2) The Committee may also appoint other sub-committees for such purposes as it may think fit and any such sub-committee shall consist of such number of members and other persons as may be determined by bye-laws made in this behalf by the Committee.

Disqualifica-
tion for being
nominated, or
for continuing,
as a member
of Committee.

12. A person shall be disqualified for being nominated, or for continuing as a member of the Committee, if he—

(i) is not a citizen of India;

(ii) is not a Muslim, except for *ex officio* members as provided in clause (iii) of section 4;

(iii) is less than twenty-five years of age;

(iv) is of unsound mind and stands so declared by a competent court;

(v) is an undischarged insolvent;

(vi) has been convicted of an offence which, in the opinion of the Central Government, involves a moral turpitude;

(vii) has been on a previous occasion—

(a) removed from his office as a member; or

(b) removed by an order of a competent authority either for not acting in the interest of the pilgrims or for corruption.

13. The Chairperson, the Vice-Chairperson or any other member may resign his office by writing under his hand addressed to the Central Government and it shall be effective from the date of such resignation.

Resignation
of Chairper-
son, Vice-
Chairperson
and members.

14. (1) The Central Government may, by notification in the Official Gazette, remove the Chairperson, a Vice-Chairperson of the Committee or any member thereof, if he—

Removal of
Chairperson,
Vice-
Chairperson
and members.

(i) is or becomes subject to any of the disqualifications specified in section 12;
or

(ii) refuses to act or is incapable of acting or acts in a manner which the Central Government, after hearing any explanation that he may offer, considers to be prejudicial to the interests of the Committee or the interests of the pilgrims; or

(iii) fails, in the opinion of the Committee, to attend three consecutive meetings of the Committee, without sufficient excuse.

(2) Where the Chairperson or a Vice-Chairperson of the Committee is removed under sub-section (1), he shall also cease to be a member of the Committee.

15. (1) When the seat of a member becomes vacant by his removal, resignation, death or otherwise, a new member shall be nominated or elected, as the case may be, in his place and such member shall hold office so long as the member whose place he fills would have been entitled to hold office if such vacancy had not occurred.

Filling of a
casual vacancy.

(2) Any casual vacancy under sub-section (1) shall be filled up by the same category to which the former member belonged.

16. (1) The Central Government shall appoint a person, from a panel of Muslim officers of the Central Government and of the State Governments not below the rank of Deputy Secretary to the Government of India, to be the Chief Executive Officer of the Committee on such terms and conditions as may be prescribed.

Chief
Executive
Officer and
other
employees.

(2) The Chief Executive Officer shall be the *ex officio* Secretary of the Committee.

(3) The Chief Executive Officer shall be appointed for a period of three years, which may be extended by a maximum period of one year by the Central Government.

(4) The Chief Executive Officer shall execute the decisions of the Committee and perform such other functions as may be prescribed:

Provided that in case of any difference of opinion between the Chief Executive Officer and the Committee, he shall bring the matter to the notice of the Central Government, whose decision thereon shall be final.

(5) The Committee may, with the previous sanction of the Central Government, employ such other officers and employees as it deems necessary to carry out the purposes of this Act, on such terms and conditions as may be prescribed.

CHAPTER III

STATE HAJ COMMITTEES

17. (1) With effect from such date as the Central Government may, by notification in the Official Gazette, appoint in this behalf, the Government of a State shall constitute a Committee by the name of the[name of the State] Haj Committee:

Establishment
and incorpo-
ration of
State Haj
Committee.

Provided that in case it appears to the Central Government for any reasons that it is

not necessary for a State or Union territory to establish a Haj Committee, it may authorise the State Haj Committee of a contiguous State to deal with those pilgrims and suggest suitable representation of those States and Union territories.

(2) The State Committee shall be a body corporate, by the name aforesaid, having perpetual succession and a common seal with power, subject to the provisions of this Act, to acquire, hold and dispose of property, both movable and immovable, to create a charitable trust or endowment, and to contract and shall by the said name sue and be sued.

(3) Notwithstanding anything contained in this Act, an agreement may be entered into—

(a) by two or more Governments of contiguous States, or

(b) by the Central Government (in respect of one or more Union territories) and one or more Governments of States contiguous to such Union territory or Union territories,

to be in force for such period and to be subject to renewal for such further period, if any, as may be specified in the agreement to provide for the constitution of a Joint State Committee,—

(i) in a case referred to in clause (a), for all the participating States, and

(ii) in a case referred to in clause (b), for the participating Union territory or Union territories and the State or States.

(4) An agreement under this section shall be published, in a case referred to in clause (a) of sub-section (2), in the Official Gazette of the participating States and in a case referred to in clause (b) of that sub-section, in the Official Gazette of the participating Union territory or Union territories and participating State or States.

(5) Any reference in this Act to the State Committee shall, unless the context otherwise requires, be construed as including a Joint State Committee.

Composition of
State
Committee.

18. (1) A State Committee shall consist of sixteen members, to be nominated by the State Government, namely:—

(i) three members from the Muslim members of

(a) Parliament representing the State;

(b) State Legislative Assembly; and

(c) Legislative Council, where it exists;

(ii) three members from Muslim members representing local bodies in the State;

(iii) three members having expertise in Muslim theology and law including one who shall be a Shia Muslim;

(iv) five members representing Muslim voluntary organisations working in the fields of public administration, finance, education, culture or social work;

(v) the Chairperson of the State Wakf Board; and

(vi) Executive Officer of the State Committee, who shall be the *ex officio* member of the State Committee;

Provided that a Committee for any Union territory or a Joint State Committee shall consist of such number of members as may be prescribed.

(2) In case where there is no Muslim member in any of the categories mentioned in clauses (i) and (ii) of sub-section (1), or where there is no Legislative Council in a State, nomination may be made in such manner as may be prescribed.

Notification
of members.

19. As soon as may be after the nomination of the members of a State Committee under sub-section (1) of section 18, the State Government shall publish, in the Official Gazette of that State, the names of all such members.

20. (1) The term of office of the *ex officio* members and members of the State Committee (other than the members filling casual vacancies) shall be three years, commencing on the day following the publication of the list of members under section 19.

Term of office.

(2) The allowances payable to, and the other terms and conditions of the Chairperson and members shall be such as may be prescribed.

21. (1) After the publication of the names of members of the State Committee under section 19, the State Government shall convene within forty-five days the first meeting of the State Committee at which the State Committee shall elect a Chairperson from amongst its members :

Chairperson.

Provided that an *ex officio* member shall not take part in the election of the Chairperson.

(2) If the State Committee fails to elect a Chairperson, the State Government may appoint a member of the State Committee to be the Chairperson thereof.

(3) The election of the Chairperson shall be notified by the State Government in the Official Gazette of the State.

(4) The term of office of the Chairperson shall be three years and no person shall hold the office of the Chairperson for more than two consecutive terms.

(5) Any casual vacancy in the office of the Chairperson shall be filled in accordance with sub-section (1) or sub-section (2), as the case may be.

22. (1) The State Government shall take or cause to be taken all necessary steps for the reconstitution of a new State Committee at least four months before the expiry of the term of the State Committee.

Reconstitution of a State Committee.

(2) An outgoing member shall be eligible for re-nomination of the State Committee for not more than two terms:

Provided that fifty per cent of the nominees may be re-nominated for a second term in such manner as may be prescribed.

23. A person shall be disqualified for being nominated, or for continuing, as a member of the State Committee, if he—

Disqualification for being nominated, or for continuing, as a member of the Committee.

(i) is not a citizen of India;

(ii) is not a resident of that State;

(iii) is not a Muslim, except for an Executive Officer as provided in clause (vi) of sub-section (1) of section 18;

(iv) is less than twenty-five years of age;

(v) is of unsound mind and stands so declared by a competent court;

(vi) is an undischarged insolvent;

(vii) has been convicted of an offence which, in the opinion of the State Government, involves a moral turpitude;

(viii) has been on a previous occasion—

(a) removed from his office as a member; or

(b) removed by an order of a competent authority either for not acting in the interest of the pilgrims or for corruption.

24. The Chairperson or any other member may resign his office by writing under his hand addressed to the State Government and it shall be effective from the date of such resignation.

Resignation of Chairperson and members.

25. (1) The State Government may, by notification in the Official Gazette, remove the Chairperson of the State Committee or any member thereof, if he—

Removal of Chairperson and members.

(i) is or becomes subject to any of the disqualifications specified in section 23; or

(ii) refuses to act or is incapable of acting or acts in a manner which the State Government, after hearing any explanation that he may offer, considers to be prejudicial to the interests of the State Committee or the interests of the pilgrims; or

(iii) fails, in the opinion of the State Committee, to attend three consecutive meetings of the State Committee, without sufficient excuse.

(2) Where the Chairperson of the State Committee is removed under sub-section (1), he shall also cease to be a member of the State Committee.

Filling of a
casual
vacancy.

26. (1) When the seat of a member becomes vacant by his removal, resignation, death or otherwise, a new member shall be nominated in his place and such member shall hold office so long as the member whose place he fills would have been entitled to hold office if such vacancy had not occurred.

(2) Any casual vacancy under sub-section (1) shall be filled up by the same category to which the former member belonged.

Duties of
State
Committee.

27. (1) It shall be the duty of a State Committee to implement the policy and directions of the Committee in the interests of Haj pilgrims.

(2) The State Committee shall provide assistance to the Haj pilgrims including in the matter of their transport between their home States and the point of exit from India and their transit accommodation at points of exit.

(3) The State Committee shall discharge such other duties in connection with Haj as may be prescribed by the State Government concerned, in consultation with the Central Government.

Meetings of
State
Committee.

28. (1) A State Committee shall meet at least twice in a year before the Haj day and once after the Haj is over.

(2) The number of members required to make a quorum at any meeting of the State Committee shall be one-third of its members.

(3) In addition to the number of meetings specified in sub-section (1), the State Committee may hold meetings as and when requisitioned by at least one-third of its members or when considered necessary by the Chairperson.

(4) All matters shall be decided by a majority of votes of the members present and, in the event of an equality of votes, the Chairperson or other person presiding shall have a casting vote.

Executive
Officer and
other
employees of
State
Committee.

29. (1) The State Government shall appoint a person, from amongst its officers not below the rank of Deputy Secretary, to be the Executive Officer of the State Committee:

Provided that the person so appointed shall preferably be a Muslim.

(2) The Executive Officer of the State Committee shall act as its Secretary.

(3) The Executive Officer shall execute the decisions of the State Committee and perform such other functions as may be prescribed :

Provided that in case of any difference of opinion between the Executive Officer and the State Committee, he shall bring the matter to the notice of the State Government whose decision thereon shall be final.

(4) The State Committee shall, with the previous sanction of the State Government, employ such officers and other employees as it deems necessary to carry out the purposes of this Act.

(5) The term of office and conditions of service of officers and other employees shall be such as may be prescribed.

CHAPTER IV

FINANCE, ACCOUNTS AND AUDIT

Central Haj
Fund.

30. The Committee shall have its own Fund to be called the Central Haj Fund, and there shall be placed to the credit thereof the following sums, namely:—

(a) sums realised from any fees and service charges which may be levied by the Committee:—

(i) for registration of applications for Haj; and

(ii) for issue of Haj pilgrim travel passes;

(b) money collected from pilgrims for performance of Haj;

(c) the income from all deposits and investment of the Committee's funds;

(d) the sums realised from the sale of the effects of deceased pilgrims and sums of money left by them, which are unclaimed and have lapsed to the Central Government;

(e) any sums loaned by the Central or a State Government, or any other source approved by the Government;

(f) any amount that may be legally due to the Committee from any source; and

(g) the amount standing at the commencement of this Act to the credit of the Haj Fund or the Indigent Pilgrims Fund established under the Haj Committee Act, 1959.

51 of 1959.

31. The Central Haj Fund shall, subject to the provisions of this Act and the rules made thereunder, be under the control and management of the Committee, and shall be applied to the following purposes, namely:—

Application
of Central Haj
Fund.

(a) pay and allowances of the Chief Executive Officer and other employees of the Committee;

(b) payment of charges and expenses incidental to the objects specified in section 9; and

(c) any other expenses which are required to be met by the Committee or a State Committee, as approved by the Central Government.

32. The State Committee shall have its own fund to be called the State Haj Fund and the following sums shall be placed to the credit thereof, namely:—

State Haj
Fund.

(i) all sums of money paid to it or any grant made by the Committee for the purposes of this Act;

(ii) any grant or loan that may be made to the State Committee by the State Government, or any other source for the purposes of this Act, as approved by the State Government;

(iii) any amount that may be legally due to the State Committee from any source; and

(iv) the moneys, if any, standing to the credit of a State Haj Committee, at the commencement of this Act.

33. The State Haj Fund shall, subject to any rules that may be made under this Act, be under the control and management of the State Committee and shall be applied to the following purposes, namely:—

Application of
State Haj
Fund.

(i) pay and allowances of the employees of the State Committee other than its Executive Officer whose pay and allowances shall be borne by the State Government;

(ii) payment of charges and expenses incidental to the due performance of its duties by the State Committee for the objects specified in section 27; and

(iii) any other expenses, as approved by the State Government which are required to be met by the State Committee.

34. (1) The Committee and every State Committee shall maintain proper accounts and other relevant records and prepare an annual statement of accounts, in such form as may be prescribed by the Central Government, or as the case may be, the State Government.

Accounts and
audit.

(2) The accounts shall be examined and audited annually by such auditors as the Central Government or, as the case may be, the State Government may approve.

(3) The accounts of the Committee or the State Committee as certified by the auditor together with the audit report thereon shall be forwarded annually by the said Committee to the Central Government, or as the case may be, the State Government.

(4) The Central Government shall, as soon as may be after the receipt of the audit report under sub-section (3), cause the same to be laid before each House of Parliament.

(5) The State Government shall, as soon as may be, after the receipt of the audit report under sub-section (3), cause the same to be laid before the State Legislature.

CHAPTER V

MISCELLANEOUS

Powers of
Committee to
issue Pilgrim
Passes and levy
fees.

35. (1) The Committee shall have the power to issue a travel document called "Pilgrim Pass" to a Haj pilgrim for his departure from India as a *bona fide* pilgrim to Saudi Arabia and the said Pilgrim shall be deemed to be exempted from the provisions of section 3 of the Passports Act, 1967.

15 of 1967.

(2) Notwithstanding anything contained in the Passports Act, 1967, the Central Government may, in consultation with the Committee, levy such fees for registration of Haj pilgrims, issuance of Pilgrim Pass by the Committee and other related matters, as may be prescribed in connection with rendering of such services.

15 of 1967.

Supersession
of Committee.

36. (1) If, in the opinion of the Central Government, the Committee is unable to perform, or persistently makes default in the performance of the duties imposed on it by or under this Act or exceeds or abuses its powers, the Central Government may, by an order published, together with a statement of the reasons therefor, in the Official Gazette, supersede it for such period as may be specified in the order:

Provided that before making an order of supersession as aforesaid, the Central Government shall give a reasonable opportunity to the Committee to show cause why it should not be superseded.

(2) When the Committee is superseded by an order under sub-section (1),—

(a) all members shall, on such date as may be specified in the order, vacate their offices as such members without prejudice to their eligibility for nomination under clause (d);

(b) during the period of supersession of the Committee, all powers and duties conferred and imposed upon the Committee by or under this Act shall be exercised and performed by such officer or authority as the Central Government may appoint in that behalf;

(c) all property vested in the Committee shall, until it is reconstituted, vest in the Central Government;

(d) before the expiry of the period of supersession, nominations shall be made by the Central Government for the purpose of reconstituting the Committee.

(3) An order of supersession made under this section together with a statement of the reasons therefor shall be laid before each House of Parliament as soon as may be after it has been made.

(4) A State Government may exercise the same powers and duties in respect of a State Committee as mentioned in sub-sections (1), (2) and (3) of this section subject to the conditions mentioned therein and any directions issued by the Central Government in this regard.

Membership
of Commit-
tee or State
Committee
not to
constitute
office of
profit.

37. Notwithstanding anything contained in any other law for the time being in force, the office of a member of the Committee or State Committee shall not be deemed to be an office of profit.

38. No act or proceeding of the Committee or of a State Committee or of a Joint State Committee, as the case may be, shall be invalid by reason only of the existence of any vacancy amongst its members, or any defect in the constitution thereof.

Vacancies, etc., not invalidate proceedings of Committee.

45 of 1860.

39. The officers and employees of the Committees and other persons duly appointed to discharge any duty under this Act or rules or bye-laws made thereunder, shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

Officers and employees of Committee to be public servants.

40. No suit, prosecution or other legal proceeding shall lie against the Chairperson, Vice-Chairpersons or any member of the Committee or a State Committee in respect of anything in good faith done or purporting to have been done under this Act, except with the prior permission of the Central or State Government, as the case may be.

Idemnity.

41. (1) If the Central Government is satisfied that it is necessary or expedient so to do, it may, by notification published in the Official Gazette, amend the Schedule and thereupon the Schedule shall be deemed to have been amended accordingly.

Power to amend Schedule.

(2) A copy of every notification made under sub-section (1) shall be laid before each House of Parliament as soon as may be after it is made.

42. Any Haj pilgrim, who is aggrieved by the discharge of any of the duties performed by the Haj Committee or the State Haj Committee, shall make a representation for the redressal of his grievance to the Haj Committee or the State Haj Committee, as the case may be, and the same shall be disposed of by the said Committee, if necessary, after hearing the aggrieved person.

Redressal of grievances.

51 of 1959.

43. (1) On and from the commencement of this Act, all assets, rights, leaseholds, powers, authorities and privileges and all properties, movable and immovable, including lands, buildings, stores, cash balances, cash on hand, reserve funds, investments and all other rights and interests in or arising out of such properties as were immediately before such commencement in the ownership, power or control of Haj Committee, Mumbai, constituted under the Haj Committee Act, 1959 and all books of account, registers and all other documents of whatever nature relating thereto shall vest absolutely in and belong to the Committee.

Vesting of properties and other rights, etc., in Committees.

(2) On and from the commencement of this Act, all assets, rights, leaseholds, powers, authorities and privileges and all properties, movable and immovable, including lands, buildings, stores, cash balances, cash on hand, reserve funds, investments and all other rights and interests in or arising out of such properties as were immediately before such commencement in the ownership, power or control of Haj Committee of a State and, all books of account, registers and all other documents of whatever nature relating thereto shall vest absolutely in and belong to the Haj Committee of a State.

(3) All debts, obligations and liabilities incurred, all contracts entered into and all matters and things engaged to be done by, with or for the Committee or a State Committee immediately before such commencement for or in connection with the purposes of the Committee or a State Committee shall be deemed to have been incurred, entered into and engaged to be done by, with or for the Committee or a State Committee, as the case may be.

(4) All sums of money due to the Committee or a State Committee immediately before such commencement shall be deemed to be due to the Committee or a State Committee, as the case may be.

(5) All contracts made with and all instruments executed on behalf of the Haj Committee, Mumbai or the Haj Committee of a State shall be deemed to have been made or executed on behalf of the Committee, or as the case may be, the State Committee and shall be performed accordingly.

(6) In all suits and legal proceedings pending on the commencement of this Act in or to which the Haj Committee, Mumbai or the Haj Committee of a State was a party, the Committee, or as the case may be, the State Committee shall be deemed to have been substituted therefor.

Power to make
rules.

44. (1) The Central Government may, by notification, make rules to carry out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely:—

(i) the manner of election of members of the Committee under clause (ii) of section 4;

(ii) the terms and conditions of the Chairperson and members under sub-section (2) of section 6;

(iii) the powers and duties of the Chairperson under sub-section (3) of section 7;

(iv) the manner in which the members may be re-nominated under the proviso to sub-section (2) of section 8;

(v) duties in connection with Haj under clause (ix) of sub-section (1) of section 9;

(vi) the functions of the Chief Executive Officer and the terms and conditions of service of the Chief Executive Officer and other employees of the Committee under section 16;

(vii) the number of members of a Joint State Committee or of a Committee for Union territory under the proviso to clause (vi) of sub-section (1) of section 18;

(viii) the manner in which the accounts shall be maintained by the Committee and the State Committees and the audit of such accounts under section 34;

(ix) issue of Haj Pilgrim Pass under sub-section (1) of section 35;

(x) amendment of the Schedule relating to the zones comprising contiguous States or Union territories under section 41;

(xi) any other matter which may be prescribed.

(3) Every rule made under this section shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session in which it is so laid, or the session immediately following, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Power to
make bye-
laws.

45. (1) The Committee may, by notification, make bye-laws consistent with the provisions of the Act and the rules made thereunder in respect of the following matters, namely:—

(i) powers and duties of the Vice-Chairpersons under sub-section (4) of section 7;

(ii) providing for the publication of the proceedings of the Committee and any matter of interests to pilgrims under clause (viii) of sub-section (1) of section 9;

(iii) laying down the rules of procedure for transaction of business at meeting of the Committee under sub-section (5) of section 10;

(iv) powers and functions of the Standing Committee and determination of number of members and other persons in sub-committees under section 11.

(v) providing for any other matter which the Committee deems necessary for giving effect to the provisions of this Act.

(2) Bye-laws made by the Committee under this section shall be submitted to the Central Government and shall not take effect until they have been confirmed by the Central Government.

(3) Bye-laws which have been confirmed by the Central Government shall be published in the Official Gazette.

46. Subject to the provisions of this Act and the rules made thereunder, the Committee may, by general or special order in writing, with the prior approval of the Central Government, delegate to any member or Chief Executive Officer of the Committee, and subject to such conditions and limitations, as may be specified in the order, such of its powers under this Act (except the powers to make bye-laws under section 45) as it may deem necessary.

Power to delegate.

47. (1) The State Governments may, in consultation with the Central Government, by notification make rules to carry out the purposes of this Act in respect of the State Committees.

Power to make rules by State Governments.

(2) In particular, and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely:—

(i) terms and conditions of the Chairperson and members of the State Committee under sub-section (2) of section 20;

(ii) the manner in which the members may be re-nominated under the proviso to sub-section (2) of section 22;

(iii) duties of the State Committee under sub-section (3) of section 27;

(iv) the functions of the Executive Officer and the terms and conditions of service of officers and other employees under section 29;

(v) any other matter which is required to be or may be prescribed.

(3) Every rule made under this section shall be laid, as soon as may be after it is made, before the State Legislature.

48. Every officer and other employee of any of the existing Committee and the State Committee, as the case may be, shall, on and from the commencement of this Act, stand transferred to or become an officer or other employee of the Committee or the State Committee, as the case may be, with such designation as such Committee may determine and shall hold office or service therein by the same tenure, at the same remuneration, upon the same terms and conditions of service as he would have held under the Haj Committee constituted under the Haj Committee Act, 1959 and shall continue to do so as an officer or other employee of the Committee till such time the terms and conditions are duly altered by such Committee:

Provisions as to employees of the existing Committee before the commencement of this Act.

51 of 1959.

Provided that the tenure, remuneration and terms and conditions of service of any such officer or other employee of the Committee or of a State Committee, as the case may be, shall not be altered to his disadvantage without the previous sanction of the Central Government or State Government, as the case may be:

Provided further that any service rendered by any such officer or other employee before the commencement of this Act shall be deemed to be the service rendered under the Committee or, as the case may be, the State Committee.

49. No suit, prosecution or other legal proceedings shall lie against the Government or any officer or other employee of the Government or the Committee constituted under this Act in respect of anything which is in good faith done or intended to be done under this Act.

Protection of action taken in good faith.

50. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order not inconsistent with the provisions of this Act, remove the difficulty:

Power to remove difficulties.

Provided that no such order shall be made after the expiry of a period of two years from the commencement of this Act.

(2) Any order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

Powers to give directions.

51. The Central Government may, in exercise of its powers and performance of its functions under this Act, issue directions in writing to the Committee or the State Government or the State Committee and such Committee, State Government or State Committee, as the case may be, shall be bound to comply with such directions.

Repeal.

52. (1) The Haj Committee Act, 1959 is hereby repealed.

51 of 1959.

(2) Notwithstanding such repeal, the Haj Committee constituted under the said Act shall, until the establishment of the Committee under this Act, continue to function as if this Act had not been passed and on such notification under section 5 on the establishment of the Committee, the former Committee shall stand dissolved.

(3) Notwithstanding such repeal, anything done or any action taken under the Haj Committee Act, 1959 shall be deemed to have been done or taken under the corresponding provisions of this Act.

51 of 1959.

44-14-1

THE SCHEDULE

[See sections 4(ii) and 41(I)]

ZONE-I.	NATIONAL CAPITAL TERRITORY OF DELHI, RAJASTHAN, JAMMU AND KASHMIR, PUNJAB, HARYANA, HIMACHAL PRADESH AND UNION TERRITORY OF CHANDIGARH.
ZONE-II	UTTAR PRADESH, BIHAR, UTTARANCHAL AND JHARKHAND.
ZONE-III.	ANDHRA PRADESH, MADHYA PRADESH, CHHATTISGARH AND ORISSA.
ZONE-IV.	ASSAM, WEST BENGAL, TRIPURA, MANIPUR, SIKKIM, MEGHALAYA, ARUNACHAL PRADESH, MIZORAM, NAGALAND AND UNION TERRITORY OF ANDAMAN AND NICOBAR ISLANDS.
ZONE-V.	MAHARASHTRA, GUJARAT, GOA AND UNION TERRITORIES OF DAMAN AND DIU AND DADRA AND NAGAR HAVELI.
ZONE-VI.	TAMIL NADU, KERALA, KARNATAKA AND UNION TERRITORIES OF PONDICHERRY AND LAKSHADWEEP.

Sd/-

Dr. SUBHASH C. JAIN,
Secretary to the Government of India.

By order and in the name of the Governor of Gujarat,

V. M. KOTHARE,
Secretary to Government.

Government Central Press, Gandhinagar.



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PART - VI

Acts of Parliament and Ordinances Promulgated by the President

LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT

Sachivalaya, Gandhinagar, 9th December, 2002.

No. : RPB/48/2002/ACT-2902/E : The following Act of Parliament is republished for general information :-

GOVERNMENT OF INDIA

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS,
(Legislative Department),

New Delhi, the 28th May, 2002/Jyastha 7, 1924 (Saka)

The following Act of Parliament received the assent of the President on the 27th May, 2002 and is hereby published for general information :-

THE SALARIES AND ALLOWANCES OF OFFICERS OF PARLIAMENT AND LEADERS OF OPPOSITION IN PARLIAMENT (AMENDMENT) ACT, 2002.

AN ACT

(Act No. 29 of 2002)

(27th May, 2002)

*further to amend the Salaries and Allowances of Officers of Parliament Act, 1953 and
the Salary and Allowances of Leaders of Opposition in Parliament Act, 1977.*

BE it enacted by Parliament in the Fifty-third Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Salaries and Allowances of Officers of Parliament and Leaders of Opposition in Parliament (Amendment) Act, 2002.

Short title
and com-
mencement.

(2) It shall be deemed to have come into force on the 17th day of September, 2001.

CHAPTER II

AMENDMENT TO THE SALARIES AND ALLOWANCES OF OFFICERS OF PARLIAMENT
Act, 1953

Amendment
of section 5
of Act
20 of 1953.

2. In section 5 of the Salaries and Allowances of Officers of Parliament Act, 1953, the following proviso shall be inserted, namely:—

“Provided that on and from the 17th day of September, 2001, the sumptuary allowance shall be paid to—

(a) the Speaker of the House of the People at the same rate at which the sumptuary allowance is payable, under section 5 of the Salaries and Allowances of Ministers Act, 1952, to every other Minister who is a member of the Cabinet; 58 of 1952.

(b) the Deputy Chairman and the Deputy Speaker at the same rate at which the sumptuary allowance is payable, under section 5 of the Salaries and Allowances of Ministers Act, 1952, to a Minister of State.” 58 of 1952.

CHAPTER III

AMENDMENT TO THE SALARY AND ALLOWANCES OF LEADERS OF OPPOSITION IN
PARLIAMENT ACT, 1977

Amendment
of section 3
of Act
33 of 1977.

3. In section 3 of the Salary and Allowances of Leaders of Opposition in Parliament Act, 1977, in sub-section (3), the following proviso shall be inserted, namely:—

“Provided that on and from the 17th day of September, 2001, the sumptuary allowance shall be paid to each Leader of the Opposition at the same rate at which the sumptuary allowance is payable, under section 5 of the Salaries and Allowances of Ministers Act, 1952, to every other Minister who is a member of the Cabinet.”

58 of 1952.

Sd/-

Dr. SUBHASH C. JAIN,
Secretary to the Government of India.

By order and in the name of the Governor of Gujarat,

V. M. KOTHARE,
Secretary to Government.

Government Central Press, Gandhinagar.



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Sachivalaya, Gandhinagar, 9th December, 2002.

No. : RPB/50/2002/ACT-3102/E : The following Act of Parliament is republished for general information :-

GOVERNMENT OF INDIA MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS, (Legislative Department), New Delhi, the 28th May, 2002/Jyastha 7, 1924 (Saka)

The following Act of Parliament received the assent of the President on the 27th May, 2002 and is hereby published for general information :-

THE SALARIES AND ALLOWANCES OF OFFICERS OF PARLIAMENT (SECOND AMENDMENT) ACT, 2002.

AN ACT

(Act No. 31 of 2002)

(27th May, 2002)

further to amend the Salaries and Allowances of Officers of Parliament Act, 1953.

BE it enacted by Parliament in the Fifty-third Year of the Republic of India as follows:—

1. (1) This Act may be called the Salaries and Allowances of Officers of Parliament (Second Amendment) Act, 2002.

Short title and commencement.

(2) It shall be deemed to have come into force on the 3rd day of March, 2002.

20 of 1953.

2. After section 7 of the Salaries and Allowances of Officers of Parliament Act, 1953, the following section shall be inserted, namely:—

Insertion of new section 7A.

“7A. (1) With effect from the commencement of the Salaries and Allowances of Officers of Parliament (Second Amendment) Act, 2002, there shall be paid a family pension, to the spouse of the Speaker of the House of the People who dies while holding such office at the rate of fifty per cent. of the salary last drawn by him for the remainder of life of such spouse from the date of death of the Speaker:

Family pension, etc., to spouse of Speaker dying in office.

30 of 1954.

Provided that the spouse of such Speaker shall not be entitled to receive pension available to the spouse of any member of Parliament who dies during his term of office as such member for a period of five years from the date of death of the member under sub-section (1A) of section 8A of the Salary, Allowances and Pension of Members of Parliament Act, 1954.

(2) Without prejudice to the provisions of clause (a) of sub-section (2) of section 4 and subject to any rules made in this behalf under section 11, such spouse shall be entitled to the use of unfurnished residence without payment of licence fee for the remainder of her life.

(3) Subject to any rules made in this behalf under section 11,—

(a) such spouse, for the remainder of her life; and

(b) the minor children of such Speaker,

shall be entitled to medical attendance and treatment, free of charge.”

Sd/-

Dr. SUBHASH C. JAIN,

Secretary to the Government of India.

By order and in the name of the Governor of Gujarat,

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PART - VI

Acts of Parliament and Ordinances Promulgated by the President LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT

Sachivalaya, Gandhinagar, 9th December, 2002.

No. : RPB/51/2002/ACT-3202/E : The following Act of Parliament is republished for general information :-

GOVERNMENT OF INDIA MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS, (Legislative Department),

New Delhi, the 4th June, 2002/Jyastha 14, 1924 (Saka)

The following Act of Parliament received the assent of the President on the 3rd June, 2002 and is hereby published for general information :-

THE CONSTITUTION (SCHEDULED CASTES AND SCHEDULED TRIBES) ORDERS (AMENDMENT) ACT, 2002.

AN ACT

(Act No. 32 of 2002)

(3rd June, 2002)

further to amend the Constitution (Scheduled Castes) Order, 1950 and the Constitution (Scheduled Tribes) Order, 1950 so as to provide for inclusion of certain Scheduled Castes and Scheduled Tribes oustees of the States of Madhya Pradesh and Maharashtra, who have been displaced due to Sardar Sarovar Project on the Narmada River and are settled or may be settled in the State of Gujarat, in the lists of Scheduled Castes and Scheduled Tribes specified in relation to the State of Gujarat.

Be it enacted by Parliament in the Fifty-third Year of the Republic of India as follows:—

1. This Act may be called the Constitution (Scheduled Castes and Scheduled Tribes) Orders (Amendment) Act, 2002.

Short title.

2. In the Schedule to the Constitution (Scheduled Castes) Order, 1950, in PART IV.—Gujarat, after entry 30, the following entries shall be inserted, namely:—

Amendment
of the
Constitution
(Scheduled
Castes) Order,
1950.

"31. Balahi, Balai

32. Bhangi, Mehtar

33. Chamar

34. Chikwa, Chikvi

35. Koli, Kori

36. Kotwal (in Bhind, Dhar, Dewas, Guna, Gwalior, Indore, Jhabua, Khargone, Mandsaur, Morena, Rajgarh, Ratlam, Shajapur, Shivpuri, Ujjain and Vidisha districts).".

Amendment
of the
Constitution
(Scheduled
Tribes) Order,
1950.

3. In the Schedule to the Constitution (Scheduled Tribes) Order, 1950, in
PART IV.—*Gujarat*, after entry 29, the following entries shall be inserted; namely:—

"30. Bhil, Bhilala, Barela, Patelia

31. Tadvi Bhil, Pawra, Vasave

32. Padvi."

Sd/-

Dr. SUBHASH C. JAIN,

Secretary to the Government of India.

By order and in the name of the Governor of Gujarat,

V. M. KOTHARE,

Secretary to Government.

Government Central Press, Gandhinagar.



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The Gujarat Government Gazette

EXTRAORDINARY

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PART - VI

Acts of Parliament and Ordinances Promulgated by the President LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT

Sachivalaya, Gandhinagar, 9th December, 2002.

No. : RPB/52/2002/ACT-3302/E : The following Act of Parliament is republished for general information :-

GOVERNMENT OF INDIA MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS, (Legislative Department),

New Delhi, the 4th June, 2002/Jyastha 14, 1924 (Saka)

The following Act of Parliament received the assent of the President on the 3rd June, 2002 and is hereby published for general information :-

THE DELIMITATION ACT, 2002.

AN ACT

(Act No. 33 of 2002)

(3rd June, 2002)

to provide for the readjustment of the allocation of seats in the House of the People to the States, the total number of seats in the Legislative Assembly of each State, the division of each State and each Union territory having a Legislative Assembly into territorial constituencies for elections to the House of the People and Legislative Assemblies of the States and Union territories and for matters connected therewith.

BE it enacted by Parliament in the Fifty-third Year of the Republic of India as follows:—

1. This Act may be called the Delimitation Act, 2002.

Short title.

2. In this Act, unless the context otherwise requires,—

Definitions.

(a) "article" means an article of the Constitution;

(b) "associate member" means a member nominated under section 5;

(c) "Commission" means the Delimitation Commission constituted under section 3;

(d) "Election Commission" means the Election Commission referred to in article 324;

(e) "member" means a member of the Commission and includes the Chairperson; and

(f) "State" includes a Union territory having a Legislative Assembly but does not include the State of Jammu and Kashmir.

Constitution of
Delimitation
Commission.

3. As soon as may be after the commencement of this Act, the Central Government shall constitute a Commission to be called the Delimitation Commission which shall consist of three members as follows:—

(a) one member, who shall be a person who is or has been a Judge of the Supreme Court, to be appointed by the Central Government who shall be the Chairperson of the Commission;

(b) the Chief Election Commissioner or an Election Commissioner nominated by the Chief Election Commissioner, *ex officio*;

Provided that after the nomination of an Election Commissioner as a member under this clause, no further nomination under this clause shall be made except to fill the casual vacancy of such member under section 6; and

(c) the State Election Commissioner of concerned State, *ex officio*.

Explanation.—For the purposes of clause (c), the State Election Commissioner of concerned State, in respect of the duties of the Commission relating to that State, means the State Election Commissioner appointed by the Governor of that State under clause (1) of article 243K.

Duties of the
Commission.

4. (1) The readjustment made, on the basis of the census figures as ascertained at the census held in the year 1971 by the Delimitation Commission constituted under section 3 of the Delimitation Act, 1972, of the allocation of seats in the House of the People to the several States and the total number of seats in the Legislative Assembly of each State shall be deemed to be the readjustment made by the Commission for the purposes of this Act.

76 of 1972

(2) Subject to the provisions of sub-section (1) and any other law for the time being in force, the Commission shall readjust the division of each State into territorial constituencies for the purpose of elections to the House of the People and to the State Legislative Assembly on the basis of the census figures as ascertained at the census held in the year 1991:

Provided that where on such readjustment only one seat is allocated in the House of the People to a State, the whole of that State shall form one territorial constituency for the purpose of elections to the House of the People from that State.

Associate
members.

5. (1) The Commission shall associate with itself for the purpose of assisting it in its duties in respect of each State, ten persons five of whom shall be members of the House of the People representing that State and five shall be members of the Legislative Assembly of that State:

Provided that where the number of members of the House of the People representing any State is five or less, then, all such members shall be the associate members for that State and in the latter case the total number of associate members shall be less than ten by such number as by which the total number of members of the House of the People representing that State is less than five.

(2) The persons to be so associated from each State shall be nominated, in the case of the members of the House of the People, by the Speaker of that House, and in the case of members of a Legislative Assembly, by the Speaker of that Assembly, having due regard to the composition of the House or, as the case may be, of the Assembly.

(3) The first nominations to be made under sub-section (2)—

(a) shall be made by the Speakers of the several Legislative Assemblies within one month, and by the Speaker of the House of the People within two months, of the commencement of this Act; and

(b) shall be communicated to the Chief Election Commissioner, and where the nominations are made by the Speaker of a Legislative Assembly, also to the Speaker of the House of the People.

(4) None of the associate members shall have a right to vote or to sign any decision of the Commission.

(5) The Commission shall have power to call upon—

(a) the Registrar-General and Census Commissioner, India or his nominee; or

(b) the Surveyor General of India or his nominee; or

(c) any other officer of the Central Government or State Government; or

(d) any expert in geographical information system; or

(e) any other person,

whose expertise and knowledge are considered necessary by the Commission to provide assistance to it in addition to the assistance provided by the persons referred to in sub-section (1) and the officers and persons so called upon shall be duty bound to assist the Commission.

(6) The Secretary to the Election Commission shall be the *ex officio* Secretary of the Commission and shall discharge his functions with the assistance of the employees of the Election Commission under the supervision of the Chairperson of the Commission.

6. If the office of the Chairperson or of a member or of an associate member falls vacant owing to his death or resignation, it shall be filled as soon as may be practicable by the Central Government or the Speaker concerned under and in accordance with the provisions of section 3 or, as the case may be, of section 5.

Casual
vacancies.

5 of 1908. 7. (1) The Commission shall determine its own procedure and shall, in the performance of its functions, have all the powers of a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely:—

Procedure and
powers of the
Commission.

(a) summoning and enforcing the attendance of witnesses;

(b) requiring the production of any document; and

(c) requisitioning any public record from any court or office.

(2) The Commission shall have power to require any person to furnish any information on such points or matters as in the opinion of the Commission may be useful for, or relevant to, any matter under the consideration of the Commission.

(3) The Commission may authorise any of its members to exercise any of the powers conferred on it by clauses (a) to (c) of sub-section (1) and sub-section (2), and any order made or act done in exercise of any of those powers by the member authorised by the Commission in that behalf shall be deemed to be the order or act, as the case may be, of the Commission.

(4) If there is a difference of opinion among the members, the opinion of the majority shall prevail, and acts and orders of the Commission shall be expressed in terms of the views of the majority.

(5) The Commission as well as any group of associate members shall have power to act notwithstanding the temporary absence of a member or associate member or the existence of

a vacancy in the Commission or in that or any other group of associate members; and no act or proceeding of the Commission or of any group of associate members shall be invalid or called in question on the ground merely of such temporary absence or of the existence of such vacancy.

(6) The Commission shall be deemed to be a civil court for the purposes of sections 345 and 346 of the Code of Criminal Procedure, 1973.

2 of 1974.

Explanation.—For the purposes of enforcing the attendance of witnesses, the local limits of the jurisdiction of the Commission shall be the limits of the territory of India.

Readjustment
of number of
seats.

8. The Commission shall, having regard to the provisions of articles 81, 170, 330 and 332, and also, in relation to the Union territories, except National Capital Territory of Delhi, sections 3 and 39 of the Government of Union Territories Act, 1963 and in relation to the National Capital Territory of Delhi sub-clause (b) of clause (2) of article 239AA, by order, determine,—

20 of 1963.

(a) on the basis of the census figures as ascertained at the census held in the year 1971 and subject to the provisions of section 4, the number of seats in the House of the People to be allocated to each State and determine on the basis of the census figures as ascertained at the census held in the year 1991 the number of seats, if any, to be reserved for the Scheduled Castes and for the Scheduled Tribes of the State; and

(b) on the basis of the census figures as ascertained at the census held in the year 1971 and subject to the provisions of section 4, the total number of seats to be assigned to the Legislative Assembly of each State and determine on the basis of the census figures as ascertained at the census held in the year 1991 the number of seats, if any, to be reserved for the Scheduled Castes and for the Scheduled Tribes of the State:

Provided that the total number of seats assigned to the Legislative Assembly of any State under clause (b) shall be an integral multiple of the number of seats in the House of the People allocated to that State under clause (a).

Delimitation
of
constituencies.

9. (1) The Commission shall, in the manner herein provided, then, distribute the seats in the House of the People allocated to each State and the seats assigned to the Legislative Assembly of each State as readjusted on the basis of 1971 census to single-member territorial constituencies and delimit them on the basis of the census figures as ascertained, at the census held in the year 1991, having regard to the provisions of the Constitution, the provisions of the Act specified in section 8 and the following provisions, namely:—

(a) all constituencies shall, as far as practicable, be geographically compact areas, and in delimiting them regard shall be had to physical features, existing boundaries of administrative units, facilities of communication and public convenience;

(b) every assembly constituency shall be so delimited as to fall wholly within one parliamentary constituency;

(c) constituencies in which seats are reserved for the Scheduled Castes shall be distributed in different parts of the State and located, as far as practicable, in those areas where the proportion of their population to the total is comparatively large; and

(d) constituencies in which seats are reserved for the Scheduled Tribes shall, as far as practicable, be located in areas where the proportion of their population to the total is the largest.

(2) The Commission shall—

(a) publish its proposals for the delimitation of constituencies, together with the dissenting proposals, if any, of any associate member who desires publication thereof, in the Gazette of India and in the Official Gazettes of all the States concerned and also in such other manner as it thinks fit;

(b) specify a date on or after which the proposals shall be further considered by it;

(c) consider all objections and suggestions which may have been received by it before the date so specified, and for the purpose of such consideration, hold one or more public sittings at such place or places in each State as it thinks fit; and

(d) thereafter by one or more orders determine—

(i) the delimitation of parliamentary constituencies; and

(ii) the delimitation of assembly constituencies,

of each State.

10. (1) The Commission shall cause each of its orders made under section 8 or section 9 to be published in the Gazette of India and in the Official Gazettes of the States concerned and simultaneously cause such orders to be published at least in two vernacular newspapers and publicize on radio, television and other possible media available to the public and after such publication in the Official Gazettes of the States concerned, every District Election Officer shall cause to be affixed, the Gazette version of such orders relating to the area under his jurisdiction, on a conspicuous part of his office for public notice.

Publication of orders and their date of operation.

(2) Upon publication in the Gazette of India, every such order shall have the force of law and shall not be called in question in any court.

(3) As soon as may be after such publication, every such order shall be laid before the House of the People and the Legislative Assemblies of the States concerned.

(4) Subject to the provisions of sub-section (5), the readjustment of representation of the several territorial constituencies in the House of the People or in the Legislative Assembly of a State and the delimitation of those constituencies provided for in any such order shall apply in relation to every election to the House or to the Assembly, as the case may be, held after the publication in the Gazette of India of that order and shall so apply in supersession of the provisions relating to such representation and delimitation contained in any other law for the time being in force or any order or notification issued under such law in so far as such representation and delimitation are inconsistent with the provisions of this Act.

(5) Nothing in this section shall affect the representation in the House of the People or in the Legislative Assembly of a State until the dissolution of the House or of the Assembly, as the case may be, existing on the date of publication in the Gazette of India of the final order or orders of the Commission relating to the delimitation of parliamentary constituencies or, as the case may be, of the assembly constituencies of that State and any bye-election to fill any vacancy in such House or in any such Assembly shall be held on the basis of the provisions of the laws and orders superseded by sub-section (4) as if the said provisions had not been superseded.

(6) The Commission shall endeavour to complete and publish each of its orders referred to in sub-section (1) in the manner provided in that sub-section, within two years of the constitution of the Commission under section 3.

11. (1) The Election Commission may, from time to time, by notification in the Gazette of India and in the Official Gazette of the State concerned,—

(a) correct any printing mistake in any of the orders made by the Commission under section 9 or any error arising therein from an inadvertent slip or omission; and

(b) where the boundaries or name of any district or any territorial division mentioned in any of the said orders are or is altered, make such amendments as appear to it to be necessary or expedient for bringing the orders up-to-date, so, however, that the boundaries or areas or extent of any constituency shall not be changed by any such notification.

Power to maintain delimitation orders up-to-date.

(2) Every notification under this section shall be laid, as soon as may be after it is issued, before the House of the People and the Legislative Assembly of the State concerned.

Repeal.

12. The Delimitation Act, 1972 is hereby repealed.

76 of 1972.

Sd/-

Dr. SUBHASH C. JAIN,
Secretary to the Government of India.

By order and in the name of the Governor of Gujarat,

V. M. KOTHARE,
Secretary to Government.

Government Central Press, Gandhinagar.



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PART - VI

Acts of Parliament and Ordinances Promulgated by the President

LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT

Sachivalaya, Gandhinagar, 9th December, 2002.

No. : RPB/53/2002/ACT-3402/E : The following Act of Parliament is republished for general information :-

GOVERNMENT OF INDIA

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS,

(Legislative Department),

New Delhi, the 4th June, 2002/Jyastha 14, 1924 (Saka)

The following Act of Parliament received the assent of the President on the 3rd June, 2002 and is hereby published for general information :-

THE SALARY, ALLOWANCES AND PENSION OF MEMBERS OF PARLIAMENT (AMENDMENT) ACT, 2002.

AN ACT

(Act No. 34 of 2002)

(3rd June, 2002)

further to amend the Salary, Allowances and Pension of Members of Parliament Act, 1954.

BE it enacted by Parliament in the Fifty-third Year of the Republic of India as follows:—

1. (1) This Act may be called the Salary, Allowances and Pension of Members of Parliament (Amendment) Act, 2002.

Short title and
commence-
ment.

(2) It shall be deemed to have come into force on the 14th day of September, 2001.

2. In section 8A of the Salary, Allowances and Pension of Members of Parliament Act, 1954, in sub-section (1),—

Amendment
of section 8A
of Act 30 of
1954.

(a) in the opening portion, for the figures "1993", the figures "2001" shall be substituted;

b) in the second and third provisos, for the figures and words "1993, be entitled to a pension of two thousand and five hundred rupees per mensem" at both the places where they occur, the figures and words "2002, be entitled to a pension of three thousand rupees per mensem" shall be substituted.

Sd/-

Dr. SUBHASH C. JAIN,
Secretary to the Government of India.

By order and in the name of the Governor of Gujarat,

V. M. KOTHARE,
Secretary to Government.

Government Central Press, Gandhinagar.



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PART - VI

Acts of Parliament and Ordinances Promulgated by the President

LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT

Sachivalaya, Gandhinagar, 20th December, 2002.

No. : RPB/69/2002/ORD-5002/E : The following Ordinance promulgated by the President and published in the Gazette of India, Extra-ordinary, Part II, Section 1, dated the 29th October, 2002 is republished for general information :-

GOVERNMENT OF INDIA
MINISTRY OF LAW AND JUSTICE
(Legislative Department),

New Delhi, the 29th October 2002/Kartika 7, 1924 (Saka)

THE UNIT TRUST OF INDIA (TRANSFER OF UNDERTAKING AND REPEAL) ORDINANCE, 2002

No. 5 OF 2002

Promulgated by the President in the Fifty-third Year of the Republic of India.

An Ordinance to provide for the transfer and vesting of the undertaking (excluding specified undertaking) of the Unit Trust of India to the specified company to be formed and registered under the Companies Act, 1956, and vesting of the specified undertaking of the Unit Trust of India in the Administrator and for matters connected therewith or incidental thereto and also to repeal the Unit Trust of India Act, 1963.

WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:—

CHAPTER I

PRELIMINARY

1. (1) This Ordinance may be called the Unit Trust of India (Transfer of Undertaking and Repeal) Ordinance, 2002.

Short title and
commencement.

(2) It shall come into force at once.

Definitions.

2. In this Ordinance, unless the context otherwise requires,—

(a) "Administrator" means a person or a body of persons appointed as Administrator under section 7;

(b) "appointed day" means such date as the Central Government may, by notification in the Official Gazette, appoint under section 4;

(c) "bank" shall have the meaning assigned to it in clause (d) of section 2 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993;

51 of 1993.

(d) "Development Bank" means the Industrial Development Bank of India established under the Industrial Development Bank of India Act, 1964;

18 of 1964.

(e) "financial institution" shall have the meaning assigned to it in clause (h) of section 2 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993;

51 of 1993.

(f) "Life Insurance Corporation of India" means the Life Insurance Corporation of India established under sub-section (1) of section 3 of the Life Insurance Corporation Act, 1956;

31 of 1956.

(g) "Schedule" means the Schedules I and II to this Ordinance;

(h) "specified company" means a company to be formed and registered under the Companies Act, 1956 and whose entire capital is subscribed by such financial institutions or banks as may be specified by the Central Government, by notification in the Official Gazette, for the purpose of vesting of undertaking;

1 of 1956.

(i) "specified undertaking" includes all business, assets, liabilities and properties of the Trust representing and relatable to the schemes and Development Reserve Fund specified in the Schedule I;

(j) "State Bank" means the State Bank of India constituted under the State Bank of India Act, 1955;

23 of 1955.

(k) "Trust" means the Unit Trust of India established under sub-section (1) of section 3 of the Unit Trust of India Act, 1963;

52 of 1963.

(l) "undertaking" includes all business, assets, liabilities and properties of the Trust representing and relatable to the schemes specified in the Schedule II;

(m) "unit" means a unit issued under a unit scheme made under section 21 of the Unit Trust of India Act, 1963.

52 of 1963.

CHAPTER II

TRANSFER AND VESTING OF THE UNDERTAKING OF TRUST IN SPECIFIED COMPANY

Transfer of initial capital.

3. (1) On the appointed day, the initial capital of the Trust, contributed by the Development Bank, the Life Insurance Corporation, the State Bank and the subsidiary banks and other institutions under sections 4 and 4A of the Unit Trust of India Act, 1963, as it stood immediately before the commencement of this Ordinance, shall vest in the Central Government.

52 of 1963.

(2) The initial capital contributed by the Development Bank, the Life Insurance Corporation, the State Bank and the subsidiary banks and other institutions shall be refunded by the Central Government such amount as may be determined by it having regard to the book value, the assets and liabilities of the Trust.

Undertaking of Trust to vest in Administrator and specified company.

4. (1) On such date as the Central Government may, by notification in the Official Gazette, appoint, there shall be transferred to, and vest in,—

(a) the specified company, the undertaking (excluding the specified undertaking) of the Trust for such consideration and on such terms and conditions as may be mutually agreed upon between the Central Government and the subscribers to the capital of the specified company;

(b) the Administrator, the specified undertaking of the Trust.

(2) The decision of the Central Government, as to whether any business, assets, liabilities or properties represent or relate to the undertaking or specified undertaking, shall be final.

Provided that any business, asset or property which is not represented or related to the undertaking or specified undertaking, shall vest in the Central Government.

5. (1) The undertaking of the Trust which is transferred to, and which vest in, the specified company under section 4 or the specified undertaking, which is transferred to, and vest in, the Administrator, as the case may be, shall be deemed to include all business, assets, rights, powers, authorities and privileges and all properties, movable and immovable, real and personal, corporeal and incorporeal, in possession or reservation, present or contingent of whatever nature and wheresoever situate including lands, buildings, vehicles, cash balances, deposits, foreign currencies, disclosed and undisclosed reserves, reserve fund, special reserve fund, benevolent reserve fund, any other fund, stocks, investments, shares, bonds, debentures, security, management of any industrial concern, loans, advances and guarantees given to industrial concerns, tenancies, leases and book-debts and all other rights and interests arising out of such property as were immediately before the appointed day in the ownership, possession or power of the Trust in relation to the undertaking or the specified undertaking, as the case may be, within or without India, all books of account, registers, records and documents relating thereto and shall also be deemed to include all borrowings, liabilities, units issued and obligations of whatever kind within or without India then subsisting of the Trust in relation to such undertaking or the specified undertaking, as the case may be.

General effect of vesting of undertaking or specified undertaking in specified company or Administrator.

(2) All contracts, deeds, bonds, guarantees, powers-of-attorney, other instruments (including all units issued and unit schemes formulated by the Trust) and working arrangements subsisting immediately before the appointed day and affecting the Trust shall cease to have effect or to be enforceable against the Trust and shall be of as full force and effect against or in favour of the specified company or the Administrator, as the case may be, in which the undertaking or specified undertaking has vested by virtue of this Ordinance and enforceable as fully and effectually as if instead of the Trust, the specified company or the Administrator, as the case may be, had been named therein or had been a party thereto.

(3) All unit schemes taken by the Board of the Trust before the commencement of this Ordinance shall be deemed to have been taken by the specified company or the Administrator, as the case may be, and all the units issued by the Trust under such scheme shall be deemed to be the units issued by the specified company or the Administrator, as the case may be, and the income on such units shall be distributed and such units shall be redeemed or purchased in the same manner as would have been done by the Trust had the undertaking or the specified undertaking not been transferred under section 4.

(4) Any proceeding or cause of action pending or existing immediately before the appointed day by or against the Trust may, as from the appointed day, be continued and enforced by or against the specified company or the Administrator, as the case may be, in which the undertaking or specified undertaking has vested by virtue of this Ordinance as it might have been enforced by or against the Trust if this Ordinance had not been promulgated and shall cease to be enforceable by or against the Trust.

6. (1) Every officer or other employee of the Trust (except a trustee of the Board or the Chairman and executive trustee) serving in the employment immediately before the appointed day shall become, as from the appointed day, an officer or, as the case may be, other employee of the specified company and shall hold his office or service therein by the same tenure, at the same remuneration, upon the same terms and conditions, with the same obligations and with the same rights and privileges as to leave, leave fare concession, welfare scheme, medical benefit scheme, insurance, provident fund, other funds, retirement, voluntary

Provisions in respect of officers and other employees of Trust.

retirement, gratuity and other benefits as he would have held under the Trust if its undertaking had not vested in the specified company and shall continue to do so as an officer or, as the case may be, other employee of the specified company or until the expiry of a period of six months from the appointed day if such officer or other employee opts not to continue to be the officer or other employee of the specified company within such period.

(2) The Administrator, in consultation with the specified company, may requisite the services of such officers or other employees as it may deem fit on such terms and conditions which may be mutually agreed upon between the Administrator and the specified company.

(3) Where an officer or other employee of the Trust opts under sub-section (1) not to be in employment or service of the specified company, such officer or other employee shall be deemed to have resigned.

14 of 1947.

(4) Notwithstanding anything contained in the Industrial Disputes Act, 1947 or in any other law for the time being in force, the transfer of the services of any officer or other employee of the Trust to the specified company shall not entitle such officer or other employee to any compensation under this Ordinance or under any other law for the time being in force and no such claim shall be entertained by any court, tribunal or other authority.

(5) The officers and other employees who have retired before the appointed day from the service of the Trust and are entitled to any benefits, rights or privileges shall be entitled to receive the same benefits, rights or privileges from the specified company.

(6) The trust of the provident fund or the gratuity fund of the Unit Trust of India and any other bodies created for the welfare of officers or other employees would continue to discharge their functions in the specified company as was being done hitherto in the Unit Trust of India and any tax exemption granted to the provident fund or the gratuity fund would continue to be applied to the specified company.

1 of 1956.

(7) Notwithstanding anything contained in this Ordinance or in the Companies Act, 1956 or in any other law for the time being in force or in the regulations of the Unit Trust of India, the Chairman, the trustees, executive trustee or any other person entitled to manage the whole or substantial part of the business and affairs of the Trust shall not be entitled to any compensation against the Trust for the loss of office or for the premature termination of any contract of management entered into by him with the Trust.

CHAPTER III

APPOINTMENT OF ADMINISTRATOR TO MANAGE THE SPECIFIED UNDERTAKING OF THE TRUST

7. (1) The Central Government shall, on and from the appointed day, appoint a person or a body of persons, as the "Administrator of the specified undertaking of the Unit Trust of India" for the purpose of taking over the administration thereof and the Administrator shall carry on the management of the specified undertaking of the Trust for and on behalf of the Central Government.

Appointment of Administrator to manage specified undertaking.

(2) The Central Government may issue such directions (including directions as to initiating, defending or continuing any legal proceedings before any court, tribunal or other authority) to the Administrator as to his powers and duties as that Government may deem desirable and the Administrator may apply to the Central Government at any time for instructions as to the manner in which he shall conduct the management of the specified undertaking or in relation to any matter arising in the course of such management.

(3) Subject to the other provisions of this Ordinance and the Schemes made thereunder and the control of the Central Government, the Administrator shall be entitled, notwithstanding anything contained in any other law for the time being in force, to exercise, in relation to the management of the specified undertaking, the powers specified under section 10 including powers to dispose of any property or assets of such specified undertaking whether such powers are derived under any law for the time being in force.

(4) Every person having possession, custody or control of any property forming part of the specified undertaking of the Trust shall deliver forthwith such property to the Administrator.

(5) Any person who, on the appointed day, has in his possession or under his control any books, papers or other documents relating to the specified undertaking, including the minutes book containing the resolutions of the persons in charge of the management of the specified undertaking, before the appointed day, the current cheque books relating to the specified undertaking, any letters, memoranda, notes or other communications between him and the specified undertaking shall, notwithstanding anything contained in any other law for the time being in force, be liable to account for the books, papers and other documents (including such minutes book, letters, memoranda, notes or other communications) to the Administrator.

(6) Any person in charge of the management of the specified undertaking immediately before the appointed day shall, within ten days from that day or within such further period as the Central Government may allow in this behalf, furnish to the Administrator the complete inventory of all the properties and assets (including particulars of book-debts and investments and belongings) forming part of the specified undertaking immediately before the appointed day and of all the liabilities and obligations of such Trust, in relation to its administration, subsisting immediately before that day, and also of all agreements entered into by the specified undertaking in relation to its administration and in force immediately before that day.

(7) The Administrator shall receive from the funds of the specified undertaking such remuneration as the Central Government may fix.

8. (1) The Administrator shall, immediately on redemption of all the schemes of the specified undertaking and the payment of entire amount to investors, shall vacate his office; but nothing in this sub-section shall be construed as prohibiting his appointment as a member of the Board of Advisers after vacation of his office as such.

Administrator
to vacate
office.

(2) On the vacation of his office, the Administrator shall forthwith deliver, to the Central Government or any institution or officer specified by it, possession of all assets and properties representing and relating to the specified undertaking which are in his possession, custody and control on the date immediately preceding the date on which he vacates his office as the Administrator.

CHAPTER IV

POWERS AND FUNCTIONS OF BOARD OF ADVISERS

9. (1) On such date as the Central Government may, by notification in the Official Gazette, appoint a Board of Advisers to advise and assist the Administrator in carrying on the management of the specified undertaking.

Board of
Advisers.

(2) The composition, term of office of Advisers, the fees and allowances and other conditions of appointment, disqualifications for being an Adviser, filling of casual vacancy in the office of the Adviser, the meetings of the Board of Advisers, vacation and resignation of office of the Advisers, shall be such as may be specified in the Scheme made by the Central Government.

10. (1) Subject to the provisions of this Ordinance and the Scheme made thereunder, the Administrator may, on the advice of the Board of Advisers, transact any of the following kind of business in India in relation to the specified undertaking only, namely:—

Powers and
functions of
Administrator.

(a) selling and purchasing units of the schemes specified in the Schedule I;

(b) investing in and acquiring, holding or disposing of securities and exercising and enforcing, all powers and rights incidental thereto including protection or realisation of such investment and the taking over of the administration of any property offered as security for such investment;

(c) granting of loans and advances upon the security of any movable or immovable property or otherwise;

(d) accepting, collecting, discounting, re-discounting, purchasing, selling or negotiating or otherwise dealing with, any bills of exchange, hundies, promissory notes, coupons, drafts, bill of lading, railway receipts, warehouse receipts, documents of title to goods, warrants, certificates, scrips and other mercantile instruments;

(e) purchasing, selling or issuing participation certificates in relation to any loan or advance granted by any public financial institution or scheduled bank or such other institution as may be specified by the Central Government;

(f) keeping money on deposit with companies or other bodies corporate, scheduled banks or such other institutions as may be specified by the Central Government;

(g) formulating in relation to any unit scheme specified in the Schedule I,—

(i) savings and life insurance plan or plans under which a person may acquire an interest in units in association with or as the agent of, the Life Insurance Corporation of India or the Central Government, but not including the life insurance business;

(ii) savings and insurance plan or plans under which a person may acquire an interest in units in association with, or as the agent of, the General Insurance Corporation but not including the general insurance business; or

(iii) any other plan or plans, under which a person may acquire an interest in units;

(h) acquiring immovable property or any interest therein, the development (including construction) and sale of such property and the rendering of financial and other assistance to any person for the acquisition of any immovable property or any interest therein and for the development (including construction) of such property;

(i) providing leasing and hire purchase finance to persons, to companies, and other bodies corporate;

(j) providing merchant banking and investment advisory services;

(k) extending investment or fund or port folio management services to persons resident outside India;

(l) opening of an account or the making of an agency arrangement with a bank incorporated outside India;

(m) buying or selling of or entering into such other dealings in, foreign exchange, as may be necessary for the discharge of its functions;

(n) doing any other kind of business connected with mobilisation of savings or investments which the Central Government may authorise;

(o) generally doing all such acts and things as may be incidental to or consequential upon the discharge of its functions under this Ordinance.

(2) The Administrator shall, on and after the appointed day, neither formulate any new scheme nor issue any new unit, whether related to the undertaking or the specified undertaking or otherwise.

Maintenance
of accounts by
Administrator.

11. (1) The Administrator shall maintain separate accounts of each specified asset possession whereof has been taken by him, and shall cause to be made therein entries of all receipts and expenditure in respect thereof.

(2) The separate accounts under sub-section (1) shall be maintained in such form and in such manner as may be specified by the Central Government.

(3) The Central Government shall cause the accounts maintained under this section to be inspected and audited at such intervals and by such persons as may be specified by it.

CHAPTER V

MISCELLANEOUS

12. With effect from the appointed day, all fiscal and other concessions, licences, benefits, privileges and exemptions granted to the Trust in connection with the affairs and business of the specified undertaking under any law for the time being in force shall be deemed to have been granted to the specified undertaking.

Concession, etc., to be deemed to have been granted to specified undertaking.

43 of 1961

13. (1) Notwithstanding anything contained in the Income-tax Act, 1961 or any other enactment for the time being in force relating to tax or income, profits or gains, no income-tax or any other tax shall be payable by the Administrator in relation to the specified undertaking for a period of five years computed from the appointed day in respect of any income, profits or gains derived, or any amount received by the specified undertaking.

Tax exemption or benefit to continue to have effect.

43 of 1961

(2) The transfer and vesting of the undertaking or the specified undertaking in terms of section 4 shall not be construed as a transfer within the meaning of the Income-tax Act, 1961 for the purposes of capital gains.

2 of 1899

14. Notwithstanding anything contained in the Indian Stamp Act, 1899, transfer and vesting of the undertaking and the specified undertaking in terms of section 4 shall not be liable to the payment of any stamp duty under that Act.

Exemption from stamp duty.

15. Any guarantee given for or in favour of the Trust with respect to any loan, lease, finance or other assistance shall continue to be operative in relation to the specified undertaking managed by the Administrator.

Guarantee to be operative

16. No suit or other legal proceedings shall lie against the Central Government or the Administrator, Board of Advisers or any of the officers or other employees of the Central Government for any damage caused or likely to be caused by anything which is in good faith done or intended to be done under this Ordinance.

Protection of action taken in good faith.

2 of 1882

4 of 1938

10 of 1949

17. Notwithstanding anything contained in any other law for the time being in force, the shares, bonds, debentures and units of the specified undertaking shall be deemed to be approved securities for the purposes of the Indian Trusts Act, 1882, the Insurance Act, 1938 and the Banking Regulation Act, 1949.

Shares, bonds, debentures and units to be deemed to be approved securities.

18. In every Act, rule, regulation or notification in force on the appointed day, for the words "Unit Trust of India", wherever they occur, the words, brackets and figures "specified company referred to in the Unit Trust of India (Transfer of Undertaking and Repeal) Ordinance, 2002" or "Administrator of the specified undertaking of the Unit Trust of India referred to in the Unit Trust of India (Transfer of Undertaking and Repeal) Ordinance, 2002", as the case may be, shall be substituted.

Substitution in Acts, rule or regulation or notification of specified company or Administrator in place of Trust.

19. (1) The Central Government may, by notification in the Official Gazette, alter any of the provisions contained in Schedules I and II.

Power of Central Government to alter Schedules I and II.

(2) Every alteration made by the Central Government under sub-section (1) shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the alteration, or both Houses agree that the alteration should not be made, the alteration shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done in pursuance of that alteration.

Power of Central Government to make Scheme.

20. (1) The Central Government may, by notification in the Official Gazette, make a Scheme for carrying out the provisions of this Ordinance.

(2) In particular, and without prejudice to the generality of the foregoing power, the said Scheme may provide for all or any of the following matters, namely:—

(a) the manner in which the specified undertaking and schemes specified in Schedule I shall be managed;

(b) the term of office of the Advisers, the fee and allowances and other conditions of appointment of Advisers, disqualifications for being an Adviser, filling of casual vacancy in the office of Adviser, the meetings of Board, vacation and resignation of office of the Advisers shall be such as may be specified in the Scheme made by the Central Government;

(c) the manner of payment of consideration for which the undertaking shall be transferred to the specified company;

(d) the assets representing and relatable to the undertaking and the specified undertaking; and

(e) such incidental, consequential and supplemental matters as may be necessary to carry out the provisions of this Ordinance.

(3) A copy of every Scheme made under sub-section (1) shall be laid before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in disapproving the making of the Scheme or both Houses agree in making any modification in the Scheme, the Scheme should not be made or, as the case may be, shall be made only in such modified form as may be agreed upon by both the Houses or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done in pursuance of that alteration.

Repeal and saving.

21. (1) On the appointed day, the Unit Trust of India Act, 1963 shall stand repealed and the Board of trustees referred to in section 10 of the said Act (hereinafter referred to as the repealed Act) shall stand dissolved. 52 of 1963.

(2) On the dissolution of the said Board, the person appointed as the Chairman of the Board and every other person appointed as the trustee and executive trustee and holding office as such immediately before such date shall vacate their respective offices.

(3) Notwithstanding such repeal, anything done or any action taken or purported to have been done or taken including any rule, regulation, notification, scheme, inspection, order or notice made or issued or any appointment, confirmation or declaration made or any permission, authorisation or exemption granted or any document or instrument executed or any direction given under the Act hereby repealed shall, in so far as it is not inconsistent with the provisions of this Ordinance, be deemed to have been done or taken under the corresponding provisions of this Ordinance.

(4) Notwithstanding the repeal of the Unit Trust of India Act, 1963 the Administrator shall, so far as may be, comply with the provisions of Chapter VI of the Act so repealed for any of the purposes related to the annual accounts and audit of the Trust. 52 of 1963.

Ordinance to have overriding effect.

22. The provisions of this Ordinance shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Ordinance or in any instrument having effect by virtue of any enactment other than this Ordinance.

Application of other laws not barred.
Power to remove difficulties.

23. The provisions of this Ordinance shall be in addition to, and not in derogation of the provisions of any other law for the time being in force.

24. (1) If any difficulty arises in giving effect to the provisions of this Ordinance, the Central Government may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Ordinance as appear to it to be necessary or expedient for removing the difficulty:

Provided that no order shall be made under this section after the expiry of two years from the date of commencement of this Ordinance.

(2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

SCHEDULE I

[See sections 2 (g) and 19]

PART I

SCHEMES

1. The Unit Scheme, 1964 published on May 30, 1964 in the Gazette of India, Part III, Section 4, dated the 30th May, 1964
2. The Children's Gift Plan-1970 published on December 11, 1971 in the Gazette of India, Part III, Section 4.
3. The Children's Gift Growth Fund Unit Scheme 1986 published on April 19, 1986 in the Gazette of India, Part III, Section 4, vide No. UT/392/DPD(P&R)3B/ Vol-I/85-86, dated the 3rd April, 1986.
4. The Bhopal Gas Victims- Monthly Income Plan- 1992 (BGVMIP) published on September 18, 1993, in the Gazette of India, Part III, Section 4, vide No. UT/DBDM/360A/SPD-174/93-94, dated the 13th August, 1993.
5. The Rajlakshmi Unit Scheme (II) published on August 27, 1994, in the Gazette of India, Part III, Section 4, vide No. UT/DBDM/140A/SPD55/93-94, dated the 29th July, 1994.
6. The Monthly Income Plan 1997 (IV) published on November 2, 1997, in the Gazette of India, Part III, Section 4, vide No. UT/DBDM/SPD-71-R/R-97-98, dated the 23rd October, 1997.
7. The Institutional Investors' Special Fund Unit Scheme 1997 (II) published on February 21, 1998, in the Gazette of India, Part III, Section 4, vide No. UT/DBDM/R-96/SPD89C/97-98, dated the 5th January, 1998.
8. The Monthly Income Plan 1997 (V) published on February 21, 1998, in the Gazette of India, Part III, Section 4, vide No. UT/DBDM/R-95/SPD71S/97-98, dated the 12th January, 1998.
9. The Monthly Income Plan 1998 published on April 4, 1998, in the Gazette of India, Part III, Section 4, vide No. UT/DBDM/R-104/SPD71T/97-98, dated the 5th March, 1998.
10. The Institutional Investors' Special Fund Unit Scheme 1998 (IISFUS'98) published on May 23, 1998, in the Gazette of India, Part III, section 4, vide No. UT/DBDM/SPD-89-D/R-III/97-98, dated the 27th April, 1998.
11. The UTI NRI Fund (UNF) published on June 13, 1998, in the Gazette of India, Part III, Section 4, vide No. UT/NRI/R-113/N-52/97-98, dated the 15th May, 1998.
12. The Monthly Income Plan 1998 (II) published on August 1, 1998, in the Gazette of India, Part III, Section 4, vide No. UT/DBDM/R-119/SPD-71U/97-98 dated the 29th June, 1998.
13. The Monthly Income Plan (III) published on September 5, 1998, in the Gazette of India, Part III, Section 4, vide No. UT/DBDM/R-125/SPD-71-V/98-99 dated the 7th August, 1998.
14. The Monthly Income Plan (IV) published on February 27, 1999, in the Gazette of India, Part III, Section 4, vide No. UT/DBDM/R-160/SPD-71W/98-99 dated the 28th January, 1999.
15. Monthly Income Plan 1998 (V) published on March 6, 1999 in the Gazette of India, Part III, Section 4, vide No. UT/DBDM/R-101/SPD-71X/98-99, dated the 28th January, 1999.
16. Children's Gift Growth Fund Unit Scheme 1999 published on May 29, 1999, in the Gazette of India, Part III, Section 4, vide No. UT/DBDM/R-175/SPD-55/98-99, dated May 29, 1999.
17. The Institutional Investors' Special Fund Unit Scheme 1998 (II) published on May 29, 1999, in the Gazette of India, Part III, Section 4, vide No. UT/DBDM/R-/SPD/98-99 vide dated the 31st March, 1999.

18. The Rajlakshmi Unit Plan 1999 published on May 29, 1999, in the Gazette of India, Part III, Section 4, vide No. UT/DBDM/R-175/SPD-59A/98-99.
19. Monthly Income Plan 1999 published on June 12, 1999, in the Gazette of India, Part III, Section 4, vide No. UT/DBDM/R-179/SPD-71-Y/98-99, dated the 5th May, 1999.
20. Special Unit Scheme – 1999 formulated in pursuance of agreement between Government of India and Unit Trust of India signed on 22nd July, 1999.
21. Monthly Income Plan 1999 (II) published on January 22, 2000, in the Gazette of India, Part III, Section 4, vide No. UT/DBDM/R-224/SPD-71-Z/99-2000, dated the 30th December, 1999.
22. Monthly Income Plan 2000 published on April 15, 2000, in the Gazette of India, Part III, Section 4, vide No. UT/DBDM/SPD-119-A/R-235/99-2000, dated the 14th March, 2000.
23. Monthly Income Plan 2000 (Second) published on September 9, 2000, in the Gazette of India, Part III, section 4, vide No. UT/DBDM/SPD-119-B/R-7/99-2000, dated the 10th August, 2000.
24. Monthly Income Plan 2001 published on May 12, 2001, in the Gazette of India, Part III, Section 4, vide No. UT/DBDM/R-69/SPD-119-D/2000-2001, dated the 9th April, 2001.
25. Monthly Income Plan 2000 (Third) published on January 13, 2001, in the Gazette of India, Part III, Section 4, vide No. UT/DBDM/SPD-119-C/R15/2000-2001, dated the 14th November, 2000.

PART II

ASSETS AND INVESTMENTS

26. All assets and investments made out of the Development Reserve Fund created in 1984 under sub-section (1) of section 25B of the Unit Trust of India Act, 1963. 52 of 1963.

SCHEDULE II

[See section 2 (g) and 19]

SCHEMES AND PLANS

1. The Mutual Fund (Subsidiary) Unit Scheme, 1986 published on October 25, 1986 in the Gazette of India, Part III, Section 4, vide No. 158/DPD(P&R)100/Vol.I/86-87 dated the 9th October, 1986.
2. The Capital Growth Unit Scheme 1992 (Mastergain 92) published on July 4, 1992 in the Gazette of India, Part III, Section 4, vide No. UT/DBDM/1144/SPD-185/91-92 dated the 8th June, 1992.
3. The Housing Unit Scheme - 1992 published on in the Gazette of India, Part III, Section 4, vide No. UT/DBDM/155A/SPD-184/92-93 dated August 8, 1992.
4. The Unit Scheme 1992 published on April 17, 1993 in the Gazette of India, Part III, Section 4, vide No. UT/DBDM/2044A/SPD-61/92-93.
5. The Master Equity Plan - 1993 published on July, 17, 1993 in the Gazette of India, Part III, Section 4, vide No. UT/DBDM/2454A/SPD-74A/92-93.
6. The Senior Citizens Unit Plan published on August, 28, 1993 in the Gazette of India, Part III, Section 4, vide No. UT/DBDM/393A/SPD-60/93-94 dated the 18th August, 1993.
7. The Equity Linked Savings Unit Scheme - 1994 (ELSS 94) published on February 12, 1994 in the Gazette of India, Part III, Section 4, vide No. UT/DBDM/R96A/SPD74B/93-94 dated the 11th January 1994.
8. The Growing Corpus Growing Income Scheme - 1994 (GCGI 94) published on April 2, 1994 in the Gazette of India, Part III, Section 4, vide No. UT/DBDM/1704A/SPD-78/93-94 dated the 7th March, 1994.
9. The Grihalakshmi Unit Scheme 1994 (GUS 1994) published on August 20, 1994 in the Gazette of India, Part III, Section 4, vide No. UT/DBDM/76A/SPD-68/93-94.
10. The Equity Linked Savings Unit Scheme 1995 (ELSS 95) published on February 11, 1995 in the Gazette of India, Part III, Section 4, vide No. UT/DBDM/680A/SPD/74C/94-95 dated the 10th January, 1995.
11. The Primary Equity Fund published on June 3, 1995 in the Gazette of India, Part III, Section 4, vide No. UT/DBDM/1109A/SPD-85/94-95 dated the 2nd May, 1995.
12. The Master Equity Plan 1996 published on December 23, 1995 in the Gazette of India, Part III, Section 4, vide No. UT/DBDM/431-A/SPD-74D/95-96 dated the 30th November, 1995.
13. The Grandmaster Unit Scheme - 1993 published on January, 25, 1997 in the Gazette of India, Part III, Section 4, vide No. UT/DBDM/R-172/SPD-77/96-97 dated the 9th December, 1996.
14. The Master Equity Plan 1997 published on January 25, 1997 in the Gazette of India, Part III, Section 4, vide No. UT/DBDM/R173/SPD74-E/96-97 dated the 23rd December 1996.
15. The UTI Money Market Fund (A MONEY MARKET MUTUAL FUND) published on July 26, 1997 in the Gazette of India, Part III, Section 4, vide No. UT/DBDM/SPD-93/R-223/96-97 dated the 24th June, 1997.
16. The Master Equity Plan 1998 published on February 21, 1998 in the Gazette of India, Part III, Section 4, vide No. UT/DBDM/R96/SPD-74F/97-98 dated the 5th January, 1998.
17. The Unit Growth Scheme 10000 published on June 27, 1998 in the Gazette of India, Part III, Section 4.
18. The UTI - Bond Fund published on August 8, 1998 in the Gazette of India, Part III, Section 4, vide No. UT/DBDM/R-121/SPD-102/97-98 dated 14th July, 1998.
19. The UTI - Small Investor's Fund published on August 8, 1998 in the Gazette of India, Part III, Section 4, vide UT/DBDM/R-181/SPD-98/97-98 dated the 14th July, 1998.

20. The Master Value Unit Plan 1998 published on August 8, 1998 in the Gazette of India, Part III, Section 4, vide No.UT/DBDM/SPD-107/R-121/97-98 dated the 14th July, 1998.
21. The Master Index Fund published on August 15, 1998 in the Gazette of India, Part III, Section 4, vide No. UT/DBDM/ SPD-108R-122/97-98 dated the 17th July, 1998.
22. The Mastershare Plus Unit Scheme 1991 published on April 24, 1999 in the Gazette of India, Part III, Section 4, vide No. UT/DBDM/R-171/SPD-172/98-99 dated the 30th March, 1999.
23. The Master Equity Plan 1999 published on May 29, 1999 in the Gazette of India, Part III, Section 4, vide No.UT/DBDM/R/SPD-74G/98-99 dated the 7th April, 1999.
24. The UTI - Growth Sectors Fund (UTI - GSF) published on August 28, 1999 in the Gazette of India, Part III, Section 4, vide No.UT/DBDM/SPD-112/R-194A/98-99 dated the 27th July, 1999.
25. The UTI G-Sec Fund published on December 18, 1999 in the Gazette of India, Part III, Section 4, vide No.UT/DBM/R/SPD-114/99-2000 dated the 18th November, 1999.
26. The UTI Equity Tax Savings Plan published on March 18, 2000 in the Gazette of India, Part III, Section 4, vide No. UT/DBD/R-/SPD-117/99-2000 dated the 9th February, 2000.
27. The Mastergrowth Unit Scheme -1993 published on May 20, 2000 in the Gazette of India, Part III, Section 4, vide No.UT/DBDM/R-238/SPD-118/99-2000 dated the 17th April, 2000.
28. The Nifty Index Fund (NIF) published on May 20, 2000 in the Gazette of India, Part III, Section 4, vide No.UT/DBDM/R-239/SPD-120/99-2000 dated the 17th April, 2000.
29. The Unit Scheme 1995 (US -95) published on June 3, 2000 in the Gazette of India, Part III, Section 4, vide No. UT/DBDM/R-241/SPD-84/99-2000 dated the 3rd May, 2000.
30. The Index Select Equity Fund published on March 17, 2001 in the Gazette of India, Part III, Section 4, vide No.UT/DBDM/R-62/SPD-96/2000-2001 dated the 12th February, 2001.
31. The Unit Scheme for Charitable and Religious Trusts and Registered Societies, 1981 published on April 28, 2001 in the Gazette of India, Part III, Section 4 vide No.UT/DBDM/R-65/SPD-53/2000-2001 dated the 20th March, 2001.
32. The Unit Linked Insurance Plan 1971 published on May 19, 2001 in the Gazette of India, Part III, Section 4, vide No.UT/DBDM/R-7/SD-52/2000-2001 dated the 24th April, 2001.
33. The Children's Career Plan (CCP) published on May, 12, 2001 in the Gazette of India, Part III, Section 4, vide No. UT/DBDM/R-69/SPD-64/2000-2001 dated the 9th April, 2001.
34. The UTI- Mahila Unit Scheme (MUS) published on June 16, 2001 in the Gazette of India, Part III, Section 4, vide No.UT/DBDM/R/SPD-68-A/2000-2001 dated the 11th May, 2001.
35. The Retirement Benefit Plan (RBP) published on August 10, 2002 in the Gazette of India, Part III, Section 4, vide No.UT/DBDM/R-47/SPD-66/2001-2002 dated the 25th July, 2002.
36. The UTI Regular Income Scheme.

Sd/-

A. P. J.ABDUL KALAM,
President

Sd/-

SUBHASH C. JAIN,
Secretary to the Government of India.

By order and in the name of the Governor of Gujarat,

V. M. KOTHARE,
Secretary to Government.



सत्यमेव जयते

The Gujarat Government Gazette

EXTRAORDINARY

PUBLISHED BY AUTHORITY

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Separate paging is given to this Part in order that it may be filed as a Separate Compilation.

PART - VI

Acts of Parliament and Ordinances Promulgated by the President

LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT

Sachivalaya, Gandhinagar, 20th December, 2002.

No. : RPB/70/2002/ORD-6002/E : The following Ordinance promulgated by the President and published in the Gazette of India, Extra-ordinary, Part II, Section 1, dated the 29th October, 2002 is republished for general information :-

GOVERNMENT OF INDIA MINISTRY OF LAW AND JUSTICE (Legislative Department),

New Delhi, the 29th October 2002/Kartika 7, 1924 (Saka)

THE SECURITIES AND EXCHANGE BOARD OF INDIA (AMENDMENT) ORDINANCE, 2002

No. 6 OF 2002

Promulgated by the President in the Fifty-third Year of the Republic of India.

An Ordinance further to amend the Securities and Exchange Board of India Act, 1992.

WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:—

1. (1) This Ordinance may be called the Securities and Exchange Board of India (Amendment) Ordinance, 2002.

Short title and
commence-
ment.

(2) It shall come into force at once.

15 of 1992.

2. In section 2 of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the principal Act), after clause (h), the following clause shall be inserted, namely:—

Amendment of
Section 2.

2 of 1934

‘(ha) “Reserve Bank” means the Reserve Bank of India constituted under section 3 of the Reserve Bank of India Act, 1934;’.

Amendment
of section 4.

3. In section 4 of the principal Act,—

(a) in sub-section (1),—

(i) in clause (b), for the words “and Law”, the words and figures “and administration of the Companies Act, 1956” shall be substituted;

1 of 1956.

(ii) in clause (c), for the words and figures “the Reserve Bank of India constituted under section 3 of the Reserve Bank of India Act, 1934”, the words “the Reserve Bank” shall be substituted;

2 of 1934.

(iii) for clause (d), the following clause shall be substituted, namely:—

“(d) five other members of whom at least three shall be the whole-time members.”;

(b) in sub-section (4), for the words “Reserve Bank of India”, the words “Reserve Bank” shall be substituted.

Amendment
of section 11.

4. In section 11 of the principal Act,—

(a) in sub-section (2), after clause (i), the following clause shall be inserted, namely:—

“(ia) calling for information and record from any bank or any other authority or board or corporation established or constituted by or under any Central, State or Provincial Act in respect of any transaction in securities which are under investigation or inquiry by the Board.”;

(b) after sub-section (2), the following sub-section shall be inserted, namely:—

“(2A) Without prejudice to the provisions contained in sub-section (2), the Board may take measures to undertake inspection of any book, or register, or other document or record of any listed public company or a public company (not being intermediaries referred to in section 12) which intends to get its securities listed on any recognised stock exchange where the Board has reasonable grounds to believe that such company has been indulging in insider trading or fraudulent and unfair trade practices relating to securities market.”;

(c) in sub-section (3),—

(i) in the opening portion, for the words, brackets and figures “clause (i) of sub-section (2)”, the words, brackets, figures and letters “clause (i) or clause (ia) of sub-section (2) or sub-section (2A)” shall be substituted;

(ii) after clause (iii), the following clause shall be inserted at the end, namely:—

“(iv) inspection of any book, or register, or other document or record of the company referred to in section (2A);

(v) issuing commissions for the examination of witnesses or documents.”;

(d) after sub-section (3), the following sub-section shall be inserted, namely:—

“(4) Without prejudice to the provisions contained in sub-sections (1), (2), (2A) and (3) and section 11B, the Board may, by an order, for reasons to be recorded in writing, in the interests of investors or securities market, take any of the following measures, either pending investigation or inquiry or on completion of such investigation or inquiry, namely:—

(a) suspend the trading of any security in a recognised stock exchange;

(b) restrain persons from accessing the securities market and prohibit any person associated with securities market to buy, sell or deal in securities;

(c) suspend any office-bearer of any stock exchange or self-regulatory organisation from holding such position;

(d) impound and retain the proceeds or securities in respect of any transaction which is under investigation;

(e) attach after passing of an order on an application made for approval, by the Judicial Magistrate of first class having jurisdiction, for a period not exceeding one month, one or more bank account or accounts of any intermediary or any person associated with the securities market in any manner involved in violation of any of the provisions of this Act, or the rules or the regulations made thereunder :

Provided that only the bank account or accounts or any transaction entered therein, so far as it relates to the proceeds actually involved in violation of any of the provisions of this Act, or the rules or the regulations made thereunder shall be allowed;

(f) direct any intermediary or any person associated with the securities market in any manner not to dispose of or alienate an asset forming part of any transaction which is under investigation:

Provided that the Board may, without prejudice to the provisions contained in sub-section (2) or sub-section (2A), take any of the measures specified in clause (d) or clause (e) or clause (f), in respect of any listed public company or a public company (not being intermediaries referred to in section 12) which intends to get its securities listed on any recognised stock exchange where the Board has reasonable grounds to believe that such company has been indulging in insider trading or fraudulent and unfair trade practices relating to securities market :

Provided further that the Board shall, either before or after passing such orders, give an opportunity of hearing to such intermediaries or persons concerned.”.

5. For section 11A of the principal Act, the following section shall be substituted, namely :—

“Board to regulate or prohibit issue of prospectus, offer document or advertisement soliciting money for issue of securities.

11A. (1) Without prejudice to the provisions of the Companies Act, 1956, the Board may, for the protection of investors,—

(a) specify, by regulations—

- (i) the matters relating to issue of capital, transfer of securities and other matters incidental thereto; and
- (ii) the manner in which such matters shall be disclosed by the companies;

(b) by general or special orders—

- (i) prohibit any company from issuing of prospectus, any offer document, or advertisement soliciting money from the public for the issue of securities;
- (ii) specify the conditions subject to which the prospectus, such offer document or advertisement, if not prohibited, may be issued.

Substitution of new section for section 11A.

1 of 1956.

(2) Without prejudice to the provisions of section 21 of the Securities Contracts (Regulation) Act, 1956, the Board may specify the requirements for listing and transfer of securities and other matters incidental thereto." 42 of 1956.

Insertion of
new sections
11C and 11D.

6. After section 11B of the principal Act, the following sections shall be inserted, namely:—

"Investigation.

11C. (1) Where the Board has reasonable ground to believe that—

- (a) the transactions in securities are being dealt with in a manner detrimental to the investors or the securities market; or
- (b) any intermediary or any person associated with the securities market has violated any of the provisions of this Act or the rules or the regulations made or directions issued by the Board thereunder,

it may, at any time by order in writing, direct any person (hereafter in this section referred to as the Investigating Authority) specified in the order to investigate the affairs of such intermediary or persons associated with the securities market and to report thereon to the Board.

(2) Without prejudice to the provisions of sections 235 to 241 of the Companies Act, 1956, it shall be the duty of every manager, managing director, officer and other employee of the company and every intermediary referred to in section 12 or every person associated with the securities market to preserve and to produce to the Investigating Authority or any person authorised by him in this behalf, all the books, registers, other documents and record of, or relating to, the company or, as the case may be, of or relating to, the intermediary or such person, which are in their custody or power. 1 of 1956.

(3) The Investigating Authority may require any intermediary or any person associated with securities market in any manner to furnish such information to, or produce such books, or registers, or other documents, or record before him or any person authorised by him in this behalf as he may consider necessary if the furnishing of such information or the production of such books, or registers, or other documents, or record is relevant or necessary for the purposes of its investigation.

(4) The Investigating Authority may keep in its custody any books, registers, other documents and record produced under sub-section (2) or sub-section (3) for six months and thereafter shall return the same to any intermediary or any person associated with securities market by whom or on whose behalf the books, registers, other documents and record are produced :

Provided that the Investigating Authority may call for any book, register, other document and record if they are needed again :

Provided further that if the person on whose behalf the books, registers, other documents and record are produced requires certified copies of the books, registers, other documents and record produced before the Investigating Authority, it shall give certified copies of such books, registers, other documents and record to such person or on whose behalf the books, registers, other documents and record were produced.

(5) Any person, directed to make an investigation under sub-section (1), examine on oath, any manager, managing director, officer and other employee of any intermediary or any person associated with securities market in any manner, in relation to the affairs of his business and may administer an oath accordingly and for that purpose may require any of those persons to appear before him personally.

(6) If any person fails without reasonable cause or refuses—

(a) to produce to an Investigating Authority or any person authorised by him in this behalf any book, register, other document and record which it is his duty under sub-section (1) or sub-section (3) to produce; or

(b) to furnish any information which it is his duty under sub-section (3) to furnish; or

(c) to appear before the Investigating Authority personally when required to do so under sub-section (5) or to answer any question which is put to him by the Investigating Authority in pursuance of that sub-section; or

(d) to sign the notes of any examination referred to in sub-section (7),

he shall be punishable with imprisonment for a term which may extend to one year, or with fine, which may extend to one crore rupees, or with both, and also with a further fine which may extend to five lakh rupees for every day after the first during which the failure or refusal continues.

(7) Notes of any examination under sub-section (2) shall be taken down in writing and shall be read over to, or by, and signed by, the person examined, and may thereafter be used in evidence against him.

(8) Where in the course of investigation, the Investigating Authority has reasonable ground to believe that the books, registers, other documents and record of, or relating to, any intermediary or any person associated with securities market in any manner, may be destroyed, mutilated, altered, falsified or secreted, the Investigating Authority may make an application to the Judicial

Magistrate of the first class having jurisdiction for an order for the seizure of such books, registers, other documents and record.

(9) After considering the application and hearing the Investigating Authority, if necessary, the Magistrate may, by order, authorise the Investigating Authority —

(a) to enter, with such assistance, as may be required, the place or places where such books, registers, other documents and record are kept;

(b) to search that place or those places in the manner specified in the order; and

(c) to seize books, registers, other documents and record it considers necessary for the purposes of the investigation:

Provided that the Magistrate shall not authorise seizure of books, registers, other documents and record, of listed public company or a public company (not being the intermediaries specified under section 12) which intends to get its securities listed on any recognised stock exchange unless such company indulges in insider trading or market manipulation.

(10) The Investigating Authority shall keep in its custody the books, registers, other documents and record seized under this section for such period not later than the conclusion of the investigation as it considers necessary and thereafter shall return the same to the company or the other body corporate, or, as the case may be, to the managing director or the manager or any other person, from whose custody or power they were seized and inform the Magistrate of such return:

Provided that the Investigating Authority may, before returning such books, registers, other documents and record as aforesaid, place identification marks on them or any part thereof.

(11) Save as otherwise provided in this section, every search or seizure made under this section shall be carried out in accordance with the provisions of the Code of Criminal Procedure, 1973 relating to searches or seizures made under that Code. 2 of 1974.

Cease and desist proceedings.

11D. If the Board finds, after causing an inquiry to be made, that any person has violated, or is likely to violate, any provisions of this Act, or any rules or regulations made thereunder, the Board may pass an order requiring such person to cease and desist from committing or causing such violation:

Provided that the Board shall not pass such order in respect of listed public company or a public company (other than the intermediaries specified under section 12) which intends to get its securities listed on any recognised stock exchange unless the Board has reasonable grounds to believe that such company has indulged in insider trading or market manipulation.”.

7. After Chapter V of the principal Act, the following Chapter shall be inserted, namely:—

Insertion of
new Chapter
VA.

"Chapter VA

PROHIBITION OF MANIPULATIVE AND DECEPTIVE DEVICES, INSIDER TRADING AND SUBSTANTIAL ACQUISITION OF SECURITIES OR CONTROL

12A. No person shall directly or indirectly—

Prohibition
of manipula-
tive and
deceptive
devices,
insider
trading and
substantial
acquisition
of securities
or control.

(a) use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of this Act or the rules or the regulations made thereunder;

(b) employ any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed in a recognized stock exchange;

(c) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in securities which are listed or proposed to be listed in a recognized stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder;

(d) engage in insider trading;

(e) deal in securities while in possession of material or non-public information or communicate such material or non-public information to any other person, in a manner which is in contravention of the provisions of this Act or the rules or the regulations made thereunder;

(f) acquire control of any company or securities more than the percentage of equity share capital of a company whose securities are listed or proposed to be listed in a recognized stock exchange in contravention of the regulations made under this Act.

8. In section 14 of the principal Act, in sub-section (1), clause (aa) shall be omitted.

Amendment of
section 14.

9. In section 15A of the principal Act,—

Amendment of
section 15A.

(i) in clause (a), for the words "a penalty not exceeding one lakh and fifty thousand rupees", the words "a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less" shall be substituted;

(ii) in clause (b), for the words "a penalty not exceeding five thousand rupees for every day during which such failure continues", the words "a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less" shall be substituted;

(iii) in clause (c), for the words "a penalty not exceeding ten thousand rupees for every day during which the failure continues", the words "a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less" shall be substituted.

10. In section 15B of the principal Act, for the words "a penalty not exceeding five lakh rupees", the words "a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less" shall be substituted.

Amendment of
section 15B.

Substitution of
new section for
section 15C.

11. For section 15C of the principal Act, the following section shall be substituted, namely:—

“Penalty
for failure
to redress
investors’
grievances.

15C. If any listed company or any person who is registered as an intermediary, after having been called upon by the Board in writing, to redress the grievances of investors, fails to redress such grievances within the time specified by the Board, such company or intermediary shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.”

Amendment of
section 15D.

12. In section 15D of the principal Act, —

(i) in clause (a), for the words “a penalty not exceeding ten thousand rupees for each day during which he carries on any collective investment scheme including mutual funds, or ten lakh rupees, whichever is higher”, the words “a penalty of one lakh rupees for each day during which he sponsors or carries on any collective investment scheme including mutual funds or one crore rupees, whichever is less” shall be substituted;

(ii) in clause (b), for the words “a penalty not exceeding ten thousand rupees for each day during which such failure continues or ten lakh rupees, whichever is higher”, the words “a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less” shall be substituted;

(iii) in clause (c), for the words “a penalty not exceeding five thousand rupees for each day during which such failure continues or five lakh rupees, whichever is higher”, the words “a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less” shall be substituted;

(iv) in clause (d), for the words “a penalty not exceeding one thousand rupees for each day during which such failure continues”, the words “a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less” shall be substituted;

(v) in clause (e), for the words “a penalty not exceeding one thousand rupees for each day during which such failure continues”, the words “a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less” shall be substituted;

(vi) in clause (f), for the words “a penalty not exceeding five lakh rupees for each such failure”, the words “a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less” shall be substituted.

Amendment of
section 15E.

13. In section 15E of the principal Act, for the words “a penalty not exceeding five lakh rupees for each such failure”, the words “a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less” shall be substituted.

Amendment of
section 15F.

14. In section 15F of the principal Act, —

(i) in clause (b), for the words “a penalty not exceeding five thousand rupees for each day during which such failure continues”, the words “a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less” shall be substituted.

(ii) in clause (c), for the words “a penalty not exceeding five thousand rupees”, the words “a penalty of one lakh rupees” shall be substituted.

15. In section 15G of the principal Act, for the words "five lakh rupees", the words "twenty-five crore rupees or three times the amount of profits made out of insider trading, whichever is higher" shall be substituted. Amendment of section 15G.

16. In section 15H, —

(a) after clause (ii), the following clauses shall be inserted, namely:— Amendment of section 15H.

"(iii) make a public offer by sending letter of offer to the shareholders of the concerned company; or

(iv) make payment of consideration to the shareholders who sold their shares pursuant to letter of offer,";

(b) for the words "five lakh rupees", the words "twenty-five crore rupees or three times the amount of profits made out of such failure, whichever is higher" shall be substituted.

17. After section 15H of the principal Act, the following sections shall be inserted, namely:— Insertion of new sections 15HA and 15HB.

"Penalty for fraudulent and unfair trade practices.

15HA. If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty not exceeding twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher.

Penalty for contravention where no separate penalty has been provided.

15HB. Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which may extend to one crore rupees."

18. In section 15-I of the principal Act, in sub-section (1), for the word, figures and letter "and 15H", the figures, letters and word "15H, 15HA and 15HB" shall be substituted. Amendment of section 15-I.

19. After section 15J of the principal Act, the following section shall be inserted, namely:— Insertion of a new section 15JA.

"Crediting sum realised by way of penalties to Consolidated Fund of India.

15JA. All sums realised by way of penalties under this Act shall be credited to the Consolidated Fund of India."

20. For sections 15L and 15M of the principal Act, the following sections shall be substituted, namely:— Substitution of new section for sections 15L and 15M.

"Establishment of Securities Appellate Tribunal.

15L. A Securities Appellate Tribunal shall consist of a Presiding Officer and two other members, to be appointed, by notification, by the Central Government:

Provided that the Securities Appellate Tribunal, consisting of one person only, established before the commencement of the Securities and Exchange Board of India (Amendment) Ordinance, 2002, shall continue to exercise the jurisdiction, powers and authority conferred on it by or under this Act or any other law for the time being in force till two other Members are appointed under this section.

Qualification
for
appointment
as Presiding
Officer or
Member of
Securities
Appellate
Tribunal.

15M. (1) A person shall not be qualified for appointment as the Presiding Officer of a Securities Appellate Tribunal unless he is a sitting or retired Judge of the Supreme Court or a sitting or retired Chief Justice of a High Court:

Provided that the Presiding Officer of the Securities Appellate Tribunal shall be appointed by the Central Government in consultation with the Chief Justice of India or his nominee.

(2) A person shall not be qualified for appointment as Member of a Securities Appellate Tribunal unless he is a person of ability, integrity and standing who has shown capacity in dealing with problems relating to securities market and has qualification and experience of corporate law, securities laws, finance, economics or accountancy:

Provided that a member of the Board or any person holding a post at senior management level equivalent to Executive Director in the Board shall not be appointed as Presiding Officer or Member of a Securities Appellate Tribunal during his service or tenure as such with the Board or within two years from the date on which he ceases to hold office as such in the Board."

Substitution of
new section for
section 15N.

21. For section 15N of the principal Act, the following section shall be substituted, namely:—

"Tenure of
office of
Presiding
Officer and
other Members
of Securities
Appellate
Tribunal.

15N. The Presiding Officer and every other Member of a Securities Appellate Tribunal shall hold office for a term of five years from the date on which he enters upon his office and shall be eligible for re-appointment:

Provided that no person shall hold office as the Presiding Officer of the Securities Appellate Tribunal after he has attained the age of sixty-eight years:

Provided further that no person shall hold office as a Member of the Securities Appellate Tribunal after he has attained the age of sixty-two years."

Amendment
section 15-O.

22. In section 15-O of the principal Act,—

(a) for the words "Presiding Officer of a Securities Appellate Tribunal", the words "Presiding Officer and other Members of a Securities Appellate Tribunal" shall be substituted;

(b) for the words "said Presiding Officers", the words "Presiding Officer and other Members of a Securities Appellate Tribunal" shall be substituted.

Amendment
section 15P.

23. In section 15P of the principal Act, for the words "office of the Presiding Officer", the words "the office of the Presiding Officer or any other Member" shall be substituted.

Amendment
section 15Q.

24. In section 15Q of the principal Act, —

(a) in sub-section (1),—

(i) for the words "Presiding Officer of a Securities Appellate Tribunal", the words "the Presiding Officer or any other Member" shall be substituted;

(ii) in the proviso, for the words "the said Presiding Officer", the words "the Presiding Officer or any other Member" shall be substituted;

(b) in sub-section (2), for the words "Presiding Officer" at both the places where they occur, the words "Presiding Officer or any other Member" shall be substituted;

(c) In sub-section (3), for the words "aforesaid Presiding Officer", the words "the Presiding Officer or any other Member" shall be substituted.

25. In section 15R of the principal Act, for the words "Presiding Officer", the words "Presiding Officer or a Member" shall be substituted.

Amendment of section 15R.

26. For section 15X of the principal Act, the following section shall be substituted, namely:—

Substitution of new section for section 15X.

"Presiding Officer, Members and staff of Securities Appellate Tribunals to be public servants.

15X. The Presiding Officer, Members and other officers and employees of a Securities Appellate Tribunal shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code."

45 of 1860.

27. For section 15Z of the principal Act, the following section shall be substituted, namely:—

Substitution of new section for section 15Z.

"Appeal to Supreme Court.

15Z. Any person aggrieved by any decision or order of the Securities Appellate Tribunal may file an appeal to the Supreme Court within sixty days from the date of communication of the decision or order of the Securities Appellate Tribunal to him on any question of law arising out of such order.

Provided that the Supreme Court may, if it is satisfied that the applicant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days."

28. In section 24 of the principal Act, —

Amendment of section 24.

(a) in sub-section (1), for the words "one year, or with fine, or with both" the words "ten years, or with fine, which may extend to twenty-five crore rupees or with both" shall be substituted;

(b) in sub-section (2), for the words "three years or with fine which shall not be less than two thousand rupees but which may extend to ten thousand rupees or with both", the words "ten years or with fine, which may extend to twenty-five crore rupees or with both" shall be substituted.

29. After section 24 of the principal Act, the following sections shall be inserted, namely:—

Insertion of new sections 24A and 24B.

2 of 1974.

"Composition of certain offences

24A. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, any offence punishable under this Act, not being an offence punishable with imprisonment only, or with imprisonment and also with fine, may either before or after the institution of any proceeding, be compounded by a Securities Appellate Tribunal or a court before which such proceedings are pending.

Power to grant Immunity. —

24B. (1) The Central Government may, on recommendation by the Board, if the Central Government is satisfied, that any person, who is alleged to have violated any of the provisions of this Act or the rules or the regulations made thereunder, has made a full and true disclosure in respect of the alleged violation, grant to such person, subject to such conditions as it may think fit to impose, immunity from prosecution for any offence under this Act, or the rules or the regulations made thereunder or also from the imposition of any penalty under this Act with respect to the alleged violation :

Provided that no such immunity shall be granted by the Central Government in cases where the proceedings for the prosecution for any such offence have been instituted before the date of receipt of application for grant of such immunity:

Provided further that recommendation of the Board under this sub-section shall not be binding on the Central Government.

(2) An immunity granted to a person under sub-section (1) may, at any time, be withdrawn by the Central Government, if it is satisfied that such person had, in the course of the proceedings, not complied with the condition on which the immunity was granted or had given false evidence, and thereupon such person may be tried for the offence with respect to which the immunity was granted, or for any other offence of which he appears to have been guilty in connection with the contravention and shall also become liable to the imposition of any penalty under this Act to which such person would have been liable, had not such immunity been granted."

Amendment
of section 26.

30. In section 26 of the principal Act, in sub-section (2), for the words "a Metropolitan Magistrate or a Judicial Magistrate of the first class", the words "a Court of Session" shall be substituted.

Amendment
of section 29.

31. In section 29 of the principal Act, in sub-section (2), —

(i) in clause (db), for the words "Presiding Officers", the words "Presiding Officers, Members" shall be substituted;

(ii) in clause (dc), for the words "Presiding Officers", the words "Presiding Officers, Members" shall be substituted.

Sd/-

A. P. J. ABDUL KALAM,
President

Sd/-

SUBHASH C. JAIN,
Secretary to the Government of India.

By order and in the name of the Governor of Gujarat,

V. M. KOTHARE,
Secretary to Government.



सत्यमेव जयते

The Gujarat Government Gazette

EXTRAORDINARY

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Separate paging is given to this Part in order that it may be filed as a Separate Compilation.

PART - VI

Acts of Parliament and Ordinances Promulgated by the President

LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT

Sachivalaya, Gandhinagar, 20th December, 2002.

No. : RPB/71/2002/ORD-7002/E : The following Ordinance promulgated by the President and published in the Gazette of India, Extra-ordinary, Part II, Section 1, dated the 29th October, 2002 is republished for general information :-

GOVERNMENT OF INDIA
MINISTRY OF LAW AND JUSTICE
(Legislative Department),

New Delhi, the 29th October 2002/Kartika 7, 1924 (Saka)

THE DELHI METRO RAILWAY (OPERATION AND MAINTENANCE) ORDINANCE, 2002

No. 7 OF 2002

Promulgated by the President in the Fifty-third Year of the Republic of India.

An Ordinance to provide for the operation and maintenance and to regulate the working of the metro railway in the metropolitan city of Delhi and for matters connected therewith and incidental thereto.

WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

Now, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:—

CHAPTER I

PRELIMINARY

1. (1) This Ordinance may be called the Delhi Metro Railway (Operation and Maintenance) Ordinance, 2002.

(2) It shall come into force at once.

(3) It extends to the National Capital Territory of Delhi.

Short title,
commence-
ment and
extent.

Definitions.

2. (1) In this Ordinance, unless the context otherwise requires, —

(a) "Claims Commissioner" means a Claims Commissioner appointed under section 48;

(b) "Commissioner" means the Commissioner of the Metro Railway Safety appointed under section 7;

(c) "development" with its grammatical variations means, the carrying out of building, engineering, mining or other operations in, on, over or under land or the making of any material change on any building, or land, or planting of any tree on land and includes redevelopment;

(d) "electric supply-line" shall have the meaning assigned to it under clause (f) of section 2 of the Indian Electricity Act, 1910;

9 of 1910.

(e) "fare" means the charge levied for the carriage of passengers;

(f) "Government metro railway" means a metro railway owned by the Central Government;

(g) "land" includes any right or interest in any land;

(h) "metropolitan city of Delhi" means the area of the National Capital Territory of Delhi;

(i) "metro railway" means rail-guided mass rapid transit system having dedicated right-of-way, with steel wheel or rubber-tired wheel coaches, but excluding tramways, for carriage of passengers, and includes,—

(A) all land within the boundary marks indicating the limits of the land appurtenant to a metro railway,

(B) all rails tracks, sidings, yards or branches worked over for the purposes of, or in connection with, a metro railway,

(C) all stations, offices, ventilation shafts and ducts, warehouses, workshops, manufactories, fixed plants and machineries, sheds, depots and other works constructed for the purpose of, or in connection with a metro railway;

(j) "metro railway administration" in relation to, —

(i) a Government metro railway means the General Manager of that railway, or

(ii) a non-Government metro railway means the person who is the owner or lessee of that metro railway or the person working that metro railway under an arrangement with the owner or lessee of that metro railway;

(k) "metro railway official" means any person employed by the Central Government or by a metro railway administration in connection with the services of a metro railway;

(l) "non-Government metro railway" means a metro railway other than a Government metro railway;

(m) "notification" means a notification published in the Official Gazette of India;

(n) "pass" means an authority given by the metro railway administration or by an officer appointed by that administration in this behalf, to a person allowing him to travel as a passenger on the metro railway, but does not include a ticket;

(o) "prescribed" means prescribed by rules made by the Central Government under this Ordinance;

(p) "railway," shall have the meaning assigned to it in clause (31) of section 2 of the Railways Act, 1989;

24 of 1989.

(q) "regulation" means the regulations made by the Government metro railway administration under this Ordinance;

(r) "rolling stock" includes locomotives, engines, carriages (whether powered or not), wagons, trollies and vehicles of all kinds moving or intended to move on rails; and

13 of 1885.

(s) "telegraph line" shall have the meaning assigned to it in clause (4) of section 3 of the Indian Telegraph Act, 1885.

33 of 1978

(2) All other words and expressions used herein and not defined but defined in the Metro Railways (Construction of Works) Act, 1978, shall have the meanings, respectively, assigned to them in that Act.

CHAPTER II

GOVERNMENT METRO RAILWAY ADMINISTRATION

3. (1) The Central Government may, for the purpose of efficient administration of a Government metro railways in the metropolitan city of Delhi, by notification, constitute such railways as it may deem fit.

Constitution
of
Government
metro railway.

(2) A Government metro railway administration may, for efficient performance of its functions under this Ordinance, appoint such officers and other employees as it considers necessary on such terms and conditions of service as may be determined by regulation.

4. (1) The Central Government shall, by notification, appoint a person to be the General Manager of a Government metro railway.

Appointment
of General
Manager.

(2) The general superintendence and control of a Government metro railway shall vest in the General Manager.

CHAPTER III

FUNCTIONS AND POWERS OF THE METRO RAILWAY ADMINISTRATION

5. The functions of a metro railway administration shall be—

(a) to maintain and operate metro railway, for public carriage of passengers, constructed in, upon, across, under or over any land, building, street, road or passage in the metropolitan city of Delhi; and

Functions of
Metro Railway
Administra-
tion.

(b) to engage in any such other activities or perform such other functions as may be considered necessary for the purpose of the operation and maintenance of the metro railway in the metropolitan city of Delhi.

6. (1) The metro railway administration shall have the power to do anything which may be necessary or expedient for the purpose of carrying out its functions under the Ordinance.

Powers of
metro railway
administra-
tion.

(2) Without prejudice to the generality of the foregoing provision, such power shall include the power to,—

(a) acquire, hold and dispose of all kinds of properties owned by it, both movable and immovable;

(b) improve, develop or alter any property or asset held by it;

(c) enter temporarily in or upon the lands adjoining the metro railway alignment in order to remove obstruction, or prevent imminent danger from any source, such as tree, post or structure, which may obstruct the movement of the rolling stock, or passengers, or the view of the signal provided for movement of the rolling stock;

(d) execute any lease or grant any licence in respect of the property held by it;

(e) enter into, assign and rescind any contract or obligation;

- (f) employ an agent or contractor for discharging its functions;
- (g) obtain licence from the Central Government to establish and maintain telegraph lines;
- (h) lay down or place electric supply lines for conveyance and transmission of energy and to obtain licence for that purpose; and
- (i) do all incidental acts as are necessary for discharge of any function conferred, or imposed on it by this Ordinance.

CHAPTER IV

COMMISSIONER OF METRO RAILWAY SAFETY

Appointment
of Commis-
sioner of
Metro Railway
Safety.

7. The Central Government may appoint one or more Commissioners of Metro Railway Safety.

Duties of
Commis-
sioner.

8. The Commissioner shall —

(a) inspect the metro railway with a view to determine whether it is fit to be opened for the public carriage of passengers and report thereon to the Central Government as required by or under this Ordinance;

(b) make such periodical or other inspections of metro railway, its rolling stock used thereon and its other installations as the Central Government may direct;

(c) make an inquiry under the provisions of this Ordinance into the cause of any accident on the metro railway; and

(d) discharge such other duties as are conferred on him by or under this Ordinance.

Powers of
Commis-
sioner.

9. Subject to the control of the Central Government, the Commissioner, whenever it is necessary so to do for any of the purposes of this Ordinance, may—

(a) enter upon and inspect the metro railway or any rolling stock used thereon and its other installations;

(b) by order in writing addressed to the metro railway administration, require the attendance before him of metro railway official and to require answers or returns to such inquiries as he thinks fit to make from such metro railway official or from the metro railway administration; and

(c) require the production of any book, document or material object belonging to or in the possession or control of any metro railway administration which appears to him to be necessary to inspect.

Commissioner
to be public
servant.

10. The Commissioner shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

45 of 1860.

Facilities to
be provided to
Commis-
sioner.

11. The metro railway administration shall provide to the Commissioner all reasonable facilities for the discharge of the duties or for the exercise of the powers imposed or conferred on him by or under this Ordinance.

Annual report
of Commis-
sioner.

12. The Commissioner shall prepare, in such form and in such time, for each financial year, as may be prescribed, an annual report giving a full account of his activities during the previous financial year and forward copy thereof to the Central Government.

Annual report
to be laid
before
Parliament.

13. The Central Government shall cause the annual report of the Commissioner to be laid after its receipt before each House of Parliament.

CHAPTER V
OPENING OF METRO RAILWAY

14. The metro railway in the metropolitan city of Delhi shall not be opened for the public carriage of passengers except with the previous sanction of the Central Government.

Sanction of Central Government to opening of metro railway.

15. (1) The Central Government shall, before giving its sanction to the opening of the metro railway under section 14, obtain a report from the Commissioner that—

Formalities to be complied with before giving sanction to the opening of metro railway.

(a) he has made a careful inspection of the metro railway and the rolling stock that may be used thereon;

(b) the moving and fixed dimensions as laid down by the Central Government have not been infringed;

(c) the track structure, strength of bridges, standards of signalling system, traction system, general structural character of civil works and the size of, and maximum gross load upon, the axles of any rolling stock, comply with the requirements laid down by the Central Government; and

(d) in his opinion, metro railway can be opened for the public carriage of passengers without any danger to the public using it.

(2) If the Commissioner is of the opinion that the metro railway cannot be opened without any danger to the public using it, he shall, in his report, state the grounds therefor, as also the requirements which, in his opinion, are to be complied with before sanction is given by the Central Government.

(3) The Central Government, after considering the report of the Commissioner, may sanction the opening of the metro railway under section 14 as such or subject to such conditions as may be considered necessary by it for the safety of the public.

16. The provisions of sections 14 and 15 shall apply to the opening of the following works if they form part of, or are directly connected with, the metro railway used for the public carriage of passengers and have been constructed subsequent to the giving of a report by the Commissioner under section 15, namely:—

Sections 14 and 15 to apply to the opening of certain works.

(a) opening of additional lines of metro railway;

(b) opening of stations and junctions;

(c) re-modelling of yards and re-building of bridges; and

(d) any alteration or reconstruction materially affecting the structural character of any work to which the provisions of sections 14 and 15 apply or are extended by this section.

17. When an accident has occurred on the metro railway resulting in a temporary suspension of traffic, and either the original tracks and works have been restored to their original standard or a temporary diversion has been laid for the purpose of restoring communication, the original tracks and works so restored, or the temporary diversion, as the case may be, may, without prior inspection by the Commissioner, be opened for the public carriage of passengers, subject to the following conditions, namely:—

Temporary suspension of traffic.

(a) the metro railway official in charge of the works undertaken by reasons of the accident has certified in writing that the opening of the restored tracks and works, or of the temporary diversion will not in his opinion be attended with danger to the public; and

(b) a notice of the opening of the tracks and works or the diversion shall be sent immediately to the Commissioner.

Power to close metro railway opened for public carriage of passengers.

18. Where, after the inspection of the metro railway opened and used for the public carriage of passengers or any rolling stock used thereon, the Commissioner is of the opinion that the use of the metro railway or of any rolling stock will be attended with danger to the public using it, the Commissioner shall send a report to the Central Government who may thereupon direct that—

(i) the metro railway be closed for the public carriage of passengers; or

(ii) the use of the rolling stock be discontinued; or

(iii) the metro railway or the rolling stock may be used for the public carriage of passengers subject to such conditions as it may consider necessary for the safety of the public.

Re-opening of closed metro railway.

19. When the Central Government has, under section 18 directed the closure of the metro railway or the discontinuance of the use of any rolling stock—

(a) the metro railway shall not be re-opened for the public carriage of passengers until it has been inspected by the Commissioner and its re-opening is sanctioned in accordance with the provisions of this Chapter; and

(b) the rolling stock shall not be used until it has been inspected by the Commissioner and its re-use is sanctioned in accordance with the provisions of this Chapter.

Use of rolling stock.

20. The metro railway administration may use such rolling stock as it may consider necessary for operation and working of the metro railway:

Provided that before using any rolling stock of a design or type different from that already running on any section of the metro railway, the previous sanction of the Central Government shall be obtained for such use:

Provided further that before giving any such sanction, the Central Government shall obtain a report from the Commissioner that he has made a careful inspection of the rolling stock and, in his opinion, such rolling stock can be used.

Delegation of powers.

21. The Central Government may, by notification, direct that any of its powers or functions under this Chapter, except power to make rule under section 22, shall, in relation to such matters and subject to such conditions, if any, as may be specified in the notification, be exercised or discharged also by the Commissioner.

Power to make rules in respect of matters in this Chapter.

22. (1) The Central Government may, by notification, make rules to carry out the provisions of this Chapter.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the duties of a metro railway administration and the Commissioner in regard to the opening of a railway for the public carriage of passengers;

(b) the arrangements to be made for and the formalities to be complied with before opening a railway for the public carriage of passengers;

(c) for regulating the mode in which, and the speed at which rolling stock used on railways is to be moved or propelled; and

(d) the cases in which and the extent to which the procedure provided in this Chapter may be dispensed with.

CHAPTER VI
WORKING OF THE METRO RAILWAY

23. (1) The metro railway administration shall cause to be pasted in a conspicuous and accessible place at every station in Hindi and English a table of the fare chargeable for travelling from the station to every place for which tickets are issued to passengers.

Exhibition of fare tables at station and supply of tickets.

(2) Any person desirous of travelling on the metro railway shall, upon payment of fare, be issued with a ticket by the metro railway administration or an agent authorised in this behalf.

(3) The ticket issued under sub-section (2) shall indicate its value, period of validity and such other particulars as may be prescribed.

24. Every passenger shall, on demand by any metro railway official authorised in this behalf, present his pass or ticket to such metro railway official for examination at the beginning, or during or at the end of the journey and surrender such ticket:—

Exhibition and surrender of passes and tickets.

(a) at the end of journey if the ticket is for a single journey, or

(b) if such ticket is issued for a particular amount, on the exhaustion of the amount for which the ticket was issued.

25. No person shall enter or remain in any carriage on the metro railway, for the purpose of travelling therein as a passenger, unless he has with him a proper pass or ticket.

Prohibition against travelling without pass or ticket.

26. (1) No person shall, while travelling in the metro railway, carry with him any goods other than a small baggage containing personal belongings not exceeding such volume and weight as may be prescribed.

Carriage of goods.

(2) Where any person travels on the metro railway in contravention of the provisions of sub-section (1), he shall, notwithstanding that he holds a valid pass or ticket for any travel in such railway, be liable to be removed from the train by any metro railway official authorised by the metro railway administration in this behalf or by any other person whom such metro railway official may call to his aid.

27. (1) No person suffering from infectious or contagious diseases as may be prescribed, shall travel by the metro railway.

Prohibition against travelling of persons suffering from infectious or contagious diseases and powers to remove them.

(2) Any person travelling in contravention of any rule made under sub-section (1) shall be liable to be removed from the metro railway.

28. The metro railway administration shall provide and maintain in proper order, in any metro train, such efficient means of communication between the passengers and the metro railway official in charge of the train as may be approved by the Central Government.

Communication between passengers and metro railway officials in charge of trains.

29. The metro railway administration may use its premises, lands, buildings, posts, bridges, structures, vehicles, rolling stock and other property for displaying commercial advertisements and for that purpose may erect or construct or fix any hoardings, billboards, show cases, and such other things for the display of posters or other publicity materials.

Right of the metro railway administration to display commercial advertisements on the metro railway or on the premises occupied by it.

Carriage of dangerous or offensive material.

30. (1) No person shall take or cause to be taken on the metro railway such dangerous or offensive material as may be prescribed.

(2) If any metro railway official has reason to believe that any person is carrying with him, in a container of any form, or otherwise, any dangerous or offensive material, he may cause such container to be opened by its carrier for the purposes of ascertaining its contents.

(3) Any metro railway official may remove from the metro railway any person taking with him any dangerous or offensive material.

Power to remove persons from metro railway and its carriages.

31. Any person, entering upon or into any part of the metro railway without lawful authority, on being asked to leave the metro railway by any metro railway official, does not leave therefrom, may be removed from the metro railway by such metro railway official or by any other person whom such metro railway official may call to his aid.

Power to make rules.

32. (1) The Central Government may, by notification, make rules to carry out the provisions of this Chapter.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the particulars of the ticket such as the value, the period of validity and other particulars under sub-section (3) of section 23;

(b) the volume and weight of baggage under sub-section (1) of section 26;

(c) diseases which are infectious or contagious under sub-section (1) of section 27;

(d) material which is dangerous or offensive under sub-section (1) of section 30; and

(e) generally, for regulating the travelling upon, and the use, working and management of the railways.

(3) Every metro railway administration shall keep at every station on its metro railway a copy of all the rules made under this section and shall also allow any person to inspect it free of charge.

CHAPTER VII FARE FIXATION

Fixation of fare for carriage of passengers.

33. The metro railway administration shall, from time to time, on the recommendations made to it by the Fare Fixation Committee constituted under sub-section (1) of section 34, fix, for the carriage of passengers, fare for travelling from one station to another of the metro railway:

Provided that the metro railway administration may fix the fare under this section without recommendations of the Fare Fixation Committee on the initial opening of the metro railway.

Constitution of Fare Fixation Committee.

34. (1) The Central Government may, from time to time, constitute a Fare Fixation Committee for the purpose of recommending fare for the carriage of passengers by the metro railway.

(2) The Fare Fixation Committee shall consist of a Chairperson and two other members.

(3) A person shall not be qualified for appointment as the Chairperson unless he is or has been a Judge of a High Court.

(4) One member each shall be nominated by the Central Government and the Government of the National Capital Territory of Delhi respectively :

Provided that a person who is or has been an Additional Secretary to the Government of India or holds any equivalent post in the Central Government shall be qualified to be nominated by the said Government.

(5) A sitting Judge of a High Court shall be appointed after consultation with the Chief Justice of that High Court.

35. (1) The other terms and conditions of the Fare Fixation Committee, and the procedure to be followed by that committee shall be such as may be prescribed.

Other terms and conditions and the procedure to be followed.

(2) The metro railway administration shall provide to the Fare Fixation Committee all reasonable facility for the discharge of its duties under this Ordinance.

36. The Fare Fixation Committee shall submit its report alongwith recommendations to the metro railway administration within such period, not exceeding three months, as may be specified by order made by the Central Government.

Period for making recommendations.

37. The recommendations made by the Fare Fixation Committee shall be binding on the metro railway administration.

Recommendations to be binding on the metro railway administration.

CHAPTER VIII ACCIDENTS

38. (1) Where, in the course of working a metro railway,—

(a) any accident attended with loss of any human life, or with grievous hurt, as defined in the Indian Penal Code; or

(b) any collision between trains; or

(c) the derailment of any train carrying passengers, or of any part of such train; or

(d) any accident of a description usually attended with loss of human life or with such grievous hurt as aforesaid; or

(e) any accident of any other description which the Central Government may notify in this behalf in the Official Gazette,

Notice of metro railway accident.

occurs, the metro railway official in charge of the section of the metro railway on which the accident occurs, shall, without delay, give notice of the accident in such form and containing such particulars as may be prescribed to the Deputy Commissioner and the Deputy Commissioner of Police, within whose jurisdiction the accident occurs, the officer in charge of the police station within the local limits of which the accident occurs and to such other Magistrate or police officer as may be appointed in this behalf by the Central Government.

(2) The metro railway administration, within whose jurisdiction the accident occurs, shall, without delay, give notice of the accident to the Government of the National Capital Territory of Delhi and the Commissioner having jurisdiction over the place of the accident.

39. (1) On the receipt of a notice under section 38 of the occurrence of an accident resulting in loss of human life or grievous hurt causing total or partial disablement of permanent nature to a passenger, the Commissioner shall, as soon as may be, notify the metro railway administration in whose jurisdiction the accident occurred of his intention to hold an inquiry into the causes that led to the accident and shall at the same time fix and communicate the date, time and place of inquiry:

Inquiry by Commissioner.

Provided that it shall be open to the Commissioner to hold an inquiry into any other accident which, in his opinion, requires the holding of such an inquiry.

(2) If for any reason, the Commissioner is not able to hold an inquiry as soon as may be after the occurrence of the accident, he shall notify the metro railway administration accordingly.

Inquiry by metro railway administration.

40. Where no inquiry is held by the Commissioner under sub-section (1) of section 39 or where the Commissioner has informed the metro railway administration under sub-section (2) of that section that he is not able to hold an inquiry, the metro railway administration within whose jurisdiction the accident occurs, shall cause an inquiry to be made in accordance with the prescribed procedure.

Powers of Commissioner in relation to inquiries.

41. (1) For the purpose of conducting an inquiry under this Chapter into the causes of any accident, the Commissioner shall, in addition to the powers specified in section 9, have the powers as are vested in a civil court while trying a suit under the Code of Civil Procedure, 1908, in respect of the following matters, namely:—

5 of 1908.

(a) summoning and enforcing the attendance of persons and examining them on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

(d) requisitioning any public record or copies thereof from any court or office;

and

(e) any other matter which may be prescribed.

(2) The Commissioner while conducting an inquiry under this Chapter shall be deemed to be a Civil Court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

2 of 1974.

Statement made before Commissioner.

42. No statement made by a person in the course of giving evidence in an inquiry before the Commissioner shall subject him to, or be used against him, in any civil or criminal proceeding, except in a prosecution for giving false evidence by such person:

Provided that the statement is—

(a) made in reply to a question which is required by the Commissioner to answer; or

(b) relevant to the subject-matter of the inquiry.

Procedure, etc. for conducting inquiry.

43. The metro railway administration or the Commissioner conducting an inquiry under this Chapter may send notice of the inquiry to such persons, follow such procedure, and prepare the report in such manner as may be prescribed.

No inquiry, investigation, etc., to be made if the Commission of Inquiry is appointed.

44. Notwithstanding anything contained in the foregoing provisions of this Chapter, where a Commission of Inquiry is appointed under the Commissions of Inquiry Act, 1952, to inquire into an accident, any inquiry, investigation or other proceeding pending in relation to that accident shall not be proceeded with, and all records or other documents relating to such inquiry shall be forwarded to such authority as may be specified by the Central Government in this behalf.

3 of 1952.

Inquiry into accident not covered by section 38.

45. Where any accident of the nature not specified in section 38 occurs in the course of working the metro railway, the metro railway administration within whose jurisdiction the accident occurs, may cause such inquiry to be made into the causes of the accident, as may be prescribed.

Returns.

46. The metro railway administration shall send to the Central Government, a return of accidents occurring on its railway, whether attended with injury to any person or not, in such form and manner and at such intervals as may be prescribed.

Power to make rules in respect of matters in this Chapter.

47. (1) The Central Government may, by notification, make rules to carry out the provisions of this Chapter.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the forms of notice of accidents to be given under section 38 and the particulars of the accident such notices shall contain;

(b) the persons to whom notices in respect of any inquiry under this Chapter are to be sent, the procedure to be followed in such inquiry and the manner in which a report of such inquiry shall be prepared;

(c) the nature of inquiry to be made by the metro railway administration into the causes of an accident under section 40;

(d) for conducting an inquiry under clause (e) of sub-section (1) of section 41;

(e) the procedure of conducting inquiry and preparation of the report under section 43;

(f) the making of an inquiry into the causes of the accident under section 45; and

(g) the form and manner of sending a return of accidents by the metro railway administration under section 46.

CHAPTER IX CLAIMS COMMISSIONER

48. The Central Government may, by notification in the Official Gazette, appoint a Claims Commissioner for the purpose of adjudicating upon claims for compensation in respect of accidents involving the death of, or bodily injury to person, or damage to any property arising out of the working of the metro railway.

Claims
Commissioner.

49. A person shall not be qualified for appointment as Claims Commissioner unless he—

Qualifications
for appoint-
ment as
Claims
Commissioner.

(a) is or has been, or is qualified to be, a Judge of a High Court; or

(b) has been a Member of the Indian Legal Service and has held a post in Grade I of that Service; or

(c) has, for at least three years, held a civil judicial post carrying a scale of pay which is not less than that of a Joint Secretary to the Government of India.

50. The Claims Commissioner shall hold office as such for a term as may be specified by the Central Government.

Term of
office.

51. (1) The Claims Commissioner may, by notice in writing under his hand addressed to the Central Government, resign his office.

Resignation
and removal.

(2) The Claims Commissioner may be removed from his office by an order of the Central Government on the ground of proved misbehavior or incapacity after an inquiry in which he had been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

(3) The procedure for the investigation of misbehavior or incapacity of the Claims Commissioner referred to in sub-section (2) be such as may be prescribed.

52. The salary and allowances payable to, and the other terms and conditions of service of the Claims Commissioner shall be such as may be prescribed:

Salaries and
allowances and
other condi-
tions of service
of the Claims
Commissioner.

Provided that neither the salary and allowances nor the other terms and conditions of service of the Claims Commissioner shall be varied to his disadvantage after his appointment.

53. (1) The Claims Commissioner shall have all the powers of a civil court for the purpose of taking evidence on oath, enforcing attendance of witnesses and compelling the discovery or production of documents and material objects.

Procedure and
powers of the
Claims
Commissioner.

(2) The Claims Commissioner shall be deemed to be a civil court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

(3) In enquiring into and determining any claims for payment of compensation, the Claims Commissioner may, subject to any rules that may be made in this behalf, follow such summary procedure as he may deem fit.

(4) Subject to any rules that may be made in this behalf, the Claims Commissioner may, for the purpose of determining any claim for compensation, choose one or more persons possessing special knowledge of any matter relevant to the enquiry, to assist him in holding the enquiry.

(5) The Claims Commissioner shall have powers to pass such interim and final order as the circumstance may require, including orders for payment of costs.

Decision of
the Claims
Commis-
sioner.

54. (1) Any question as to the liability of the metro railway administration to pay compensation or as to the person to whom such compensation is payable, shall be determined by an order of the Claims Commissioner.

(2) Every order made under sub-section (1) shall be final.

Savings as to
certain rights.

55. (1) Notwithstanding anything contained in any other law for the time being in force, where the death of, or bodily injury to, any person gives rise to a claim for compensation under this Ordinance and also under any other law in force, the person entitled to compensation may claim such compensation only once either under this Ordinance or under any other law in force.

(2) Nothing in sub-section (1) shall affect the right of any person to claim compensation payable under any contract or scheme providing for compensation for death or personal injury or for damage to property or any sum payable under any policy of insurance.

Power to
make rules.

56. (1) The Central Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Chapter.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for:-

(i) the procedure for investigation of misbehaviour or incapacity of the Claims Commissioner under sub-section (3) of section 51;

(ii) the salary and allowances and other conditions of service of the Claims Commissioner under section 52; and

(iii) any other purpose incidental to or connected with the objects of this Chapter.

CHAPTER X

LIABILITY OF METRO RAILWAY ADMINISTRATION DUE TO ACCIDENTS

Extent of
liability.

57. The metro railway administration shall, notwithstanding anything contained in any other law, be liable to pay compensation for loss occasioned by the death of, or bodily injury to any person to such extent as may be prescribed.

Application
for compen-
sation.

58. An application for compensation arising out of an accident may be made to the Claims Commissioner by,—

(a) the person who has sustained the injury or suffered any loss; or

(b) all or any of the dependants of the deceased where death has resulted from the accident; or

(c) an agent duly authorised by the person injured or all or any of the dependants of the deceased, as the case may be:

Provided that where all the dependants of the deceased have not joined in any such application for compensation, the application shall be made on behalf of or for the benefit of all the dependants of the deceased and the dependants who have not so joined, shall be impleaded as respondents to the application.

24 of 1989. *Explanation:-* For the purpose of this section the word "dependant" shall have the same meaning as given to it in clause (b) of section 123 of the Railway Act, 1989.

CHAPTER XI OFFENCES AND PENALTIES

59. (1) If any person,—

(a) is in a state of intoxication; or

(b) commits any nuisance or vandalism or act of indecency, or uses obscene or abusive language; or

(c) wilfully or without excuse interferes in any way with the comfort of any passenger,

Drunkenness
or nuisance on
the metro
railway.

in any carriage or upon any part of the metro railway, he shall be punishable with fine which may extend to five hundred rupees and shall also be liable to forfeiture of the fare which he may have paid or any pass or ticket which he may have obtained or purchased, or be removed from such carriage or part by any metro railway official authorised by the metro railway administration in this behalf.

(2) If any metro railway official is in a state of intoxication while on duty, he shall be punishable with fine which may extend to two hundred and fifty rupees, or, where the improper performance of the duty would be likely to endanger the safety of any passenger travelling or being upon the metro railway, with imprisonment for a term which may extend to two years, or with fine which may extend to five hundred rupees, or with both.

60. (1) If, in contravention of sub-section (1) of section 30, a person takes or causes to be taken any offensive material upon the metro railway, he shall be punishable with fine which may extend to five hundred rupees.

Penalty for
taking or
causing to take
offensive
material upon
the metro
railway.

(2) In addition to the penalties specified in sub-section (1), a person taking or causes to be taken any offensive material upon the metro railway shall be responsible also for any loss, injury or damage which may be caused by reason of such material having been so brought upon the metro railway.

61. (1) If, in contravention of sub-section (1) of section 30, a person takes or causes to be taken any dangerous material upon the metro railway, he shall be punishable with imprisonment for a term which may extend to four years and with fine which may extend to five thousand rupees.

Penalty for
taking or
causing to take
dangerous
material upon
the metro
railway.

(2) In addition to the penalties specified in sub-section (1), a person taking or causes to be taken any dangerous material upon the metro railway shall be responsible also for any loss, injury or damage which may be caused by reason of such material having been so brought upon the metro railway.

62. (1) No demonstration of any kind whatsoever shall be held on any part of the metro railway or other premises thereof and it shall be open to the metro railway administration to exclude from such premises any person attending such demonstrations whether or not he is in possession of a pass or ticket entitling him to be in the said premises.

Prohibition of
demonstra-
tions upon the
metro railway.

(2) No person shall paste or put up any poster or write or draw anything or matter in any compartment or carriage of the metro railway, or any premises thereof, without any lawful authority and any person found engaged in doing any such act may be removed from the compartment, carriage or premises by any metro railway official authorised by the metro railway administration in this behalf.

(3) Whoever contravenes any of the provisions of sub-section (1) or sub-section (2), or being asked by any metro railway official to leave any compartment, carriage or premises refuses to do so, shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Penalty for travelling on roof, etc., of a train.

63. If any passenger travels on the roof of a train or persists in travelling in any part of a train not intended for the use of passengers or projects any part of his body out of a train after being warned by any metro railway official to desist, he shall be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to fifty rupees, or with both, and shall also be liable to be removed from the train by any metro railway official authorised by the metro railway administration in this behalf.

Penalty for unlawfully entering or remaining upon the metro railway or walking on the metro track.

64. (1) If a person enters into or upon the metro railway without any lawful authority or having entered with lawful authority remains there unlawfully and refuses to leave on being requested to do so by any metro railway official, he shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to two hundred and fifty rupees, or with both.

(2) If any person walks on the metro track without any lawful authority, he shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

Endangering the safety of passengers by metro railway official.

65. If any metro railway official, when on duty endangers the safety of any passenger,-

(a) by any rash or negligent act or omission; or

(b) by disobeying any rule, regulation or order which such official was bound by the terms of his employment to obey, and of which he had notice,

he shall be punishable with imprisonment for a term which may extend to five years, or with fine which may extend to six thousand rupees, or with both.

Abandoning train, etc., without authority.

66. If any metro railway official, when on duty, is entrusted with any responsibility connected with the running of a train, or any other rolling stock from one station or place to another station or place, and he abandons his duty before reaching such station or place, without authority or without properly handing over such train or rolling stock to another authorised metro railway official, he shall be punishable with imprisonment for a term which may extend to four years, or with fine which may extend to five thousand rupees, or with both.

Obstructing running of trains, etc.

67. If any person obstructs or causes to be obstructed or attempts to obstruct any train or rolling stock upon the metro railway by squatting, picketing, or keeping without authority any rolling stock on the metro railway or tampering with any signalling installations or by interfering with the working mechanism thereof, or otherwise, he shall be liable to be removed by any metro railway official, authorised by the metro railway administration in this behalf and shall also be punishable with imprisonment for a term which may extend to four years, or with fine which may extend to five thousand rupees, or with both.

Obstructing metro railway official in his duties.

68. If any person wilfully obstructs or prevents any metro railway official in the discharge of his duties, he shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

Travelling without proper pass or proper ticket or beyond authorised distance.

69. (1) If any passenger—

(a) travels in a train without having a proper pass or ticket with him; or

(b) being in or having alighted from a train, fails or refuses to present for examination or to deliver up his pass or ticket immediately on requisition being made therefor under section 24, or travels in a train in contravention of the provisions of section 25; he shall be liable to pay, on the demand of any metro railway official appointed by the metro railway administration in this behalf, the excess charge mentioned in sub-section (3) in addition to the ordinary single fare for the distance which he has travelled or, where there is any doubt as to the station from which he started, the ordinary single fare from the station from which the train originally started.

(2) If any passenger travels or attempts to travel in a carriage or by a train or travels in or on a carriage beyond the place authorised by his pass or ticket, he shall be liable to pay, on demand of any person appointed by the metro railway administration in this behalf, the excess charge mentioned in sub-section (3) in addition to any difference between any fare paid by him and the fare payable in respect of the journey he has made.

(3) The excess charge referred to in sub-sections (1) and (2) shall be fifty rupees.

(4) If any passenger liable to pay the excess charge and fare mentioned in sub-section (1), or the excess charge and any difference of fare mentioned in sub-section (2), fails or refuses to pay the same on a demand being made therefor, any metro railway official authorised by the metro railway administration in this behalf may apply to any Metropolitan Magistrate for the recovery of the sum payable as if it were a fine, and the Magistrate if satisfied that the sum is payable shall order it to be so recovered, and may order that the person liable for the payment shall in default of payment suffer imprisonment for a term which may extend to one month.

(5) Any sum recovered under sub-section (4) shall, as and when it is recovered, be paid to the Consolidated Fund of India.

70. If any passenger or any other person without reasonable and sufficient cause, makes use of, or interferes with, any means provided by the metro railway administration in a train for communication between passengers and metro railway official in charge of the train, or misuses alarm bell of the train, he shall be punishable with imprisonment which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

Needlessly interfering with means of communication in a train.

71. If any person willfully breaks the security code of any pass or ticket, or defaces or alters or counterfeits or duplicates it or acts in any way to cause revenue loss to metro railway, he shall be punishable with imprisonment for a term which may extend to six months.

Altering or defacing or counterfeiting pass or ticket.

72. If any person without lawful authority -

Defacing public notices.

(a) in this behalf pulls down or wilfully damages any board or documents set up or posted by the order of the metro railway administration on the metro railway, or any rolling stock, or

(b) obliterates or alters any letters or figures upon any such board or document or upon any rolling stock,

he shall be punishable with imprisonment which may extend to two months or with fine up to two hundred and fifty rupees, or with both.

73. If any person sells or exposes for sale, any article whatsoever in any metro railway carriage or upon any part of the metro premises not authorised by metro railway administration for such purpose, he shall be punishable with fine which may extend to five hundred rupees, and in default of payment of fine, he shall be punishable with imprisonment which may extend to six months:

Any sale of articles on the metro railway.

Provided that, in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the court, such fine shall not be less than one hundred rupees.

74. (1) If any person -

(a) loosens or displaces any rail or any other matter or thing belonging to the metro railway; or

(b) turns, moves, unlocks or diverts any point or other machinery belonging to the metro railway; or

(c) does or causes to be done any act of sabotage in relation to the metro railway with intent or with knowledge that it is likely to endanger safety of any person upon the metro railway,

Maliciously wrecking a train or causing sabotage.

he shall be punishable with imprisonment for life, or with rigorous imprisonment for a term which may extend to ten years:

Provided that, in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the court, where a person is punished with rigorous imprisonment, such imprisonment shall not be less than-

(i) three years in the case of a first conviction; and

(ii) seven years in the case of conviction for the second or subsequent offence.

(2) If a person unlawfully does any act of sabotage or any other act referred to in sub-section (1) with intent to cause the death of any person, or with knowledge that such act is so imminently dangerous that it must in all probability cause the death of any person or such bodily injury to any person as is likely to cause the death of any person, he shall be punishable with death or imprisonment for life.

Penalty for unauthorised sale of tickets.

75. If any person not being a metro railway official, or an agent authorised in this behalf under sub-section (2) of section 23 sells or attempts to sell any ticket in order to enable any other person to travel therewith, he shall be punishable for a term which may extend to three months, or fine which may extend to five hundred rupees, or with both, and shall also forfeit the ticket which he sells or attempts to sell.

Maliciously hurting or attempting to hurt persons travelling by metro railway.

76. If any person unlawfully throws or causes to fall or strike at against, into or upon any rolling stock forming part of a train, any wood, stone or other matter or thing with intent, or with knowledge that it is likely to endanger the safety of any person being in or upon such rolling stock or in or upon any other rolling stock forming part of the same train, he shall be punishable with imprisonment for life, or with imprisonment for a term which may extend to ten years.

Endangering safety of persons travelling by metro railway by rash or negligent act or omission.

77. If any person in a rash and negligent manner does any act, or omits to do what he is legally bound to do, and the act or omission is likely to endanger the safety of any person travelling or being upon the metro railway, he shall be punishable with imprisonment for a term which may extend to one year, or with fine, or with both.

Damage to or destruction of certain metro railway properties.

78. (1) Whoever, with intent to cause or knowing that he is likely to cause damage or destruction to any of the properties of the metro railway referred to in sub-section (2), causes by fire, explosive substance or otherwise causes damage to such property, he shall be punishable with imprisonment for a term which may extend to ten years.

(2) The properties of the metro railway referred to in sub-section (1) are the metro railway track, tunnels, sub-way, box-structures, station buildings and installations, carriage and wagons, rolling stock, signalling, telecommunication, air-conditioning and ventilation equipments, electrical sub-station, drainage pump, escalators, lifts, lighting installations, ticket vending machine, ticket barriers, electric traction and block equipments, and such other properties as the Central Government may, by notification, specify.

Endangering the safety of persons travelling by the metro railway by wilful act or omission.

79. If any person by unlawful act or by any wilful omission or neglect or by tampering with safety devices, endangers or causes to be endangered the safety of any person travelling on or being upon any metro railway, or obstructs or causes to be obstructed or attempts to obstruct any rolling stock upon any metro railway, he shall be punishable with imprisonment for a term which may extend to seven years:

Provided that, in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the court, such imprisonment shall be not less than—

(i) six months in the case of first conviction; and

(ii) two years in the case of conviction for the second or subsequent offence.

80. If any person requiring compensation from the metro railway administration under Chapter X makes a claim which is false or which he knows or believes to be false or does not believe to be true, he shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

Penalty for making a false claim for compensation.

81. (1) Where an offence under this Ordinance has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company, for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Offences by companies.

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Ordinance has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purpose of this section —

(a) “company” means any body corporate and includes a firm or other association of individuals; and

(b) “director”, in relation to a firm, means a partner in the firm.

82. (1) If a person commits any offence mentioned in sections 59, 61, 65 to 79, he may be arrested without warrant or other written authority by any metro railway official or by a police officer not below the rank of a head constable or by any other person whom such metro railway official or police officer may call to his aid:

Power of arrest without warrant.

Provided that where a person has been arrested, by any person other than the police officer, he shall be made over to a police officer, or, in the absence of a police officer, take such person or cause him to be taken in custody to the nearest police station.

(2) A person so arrested under this section shall be produced before the nearest Magistrate, having authority to try him or commit him for trial, as early as possible but within a period not exceeding twenty-four hours of such arrest exclusive of the time necessary for the journey from the place of arrest to the court of the Magistrate.

83. (1) If any person commits any offence under this Ordinance, other than an offence mentioned in section 82 or fails or refuses to pay any excess charge or other sum demanded under section 69 and there is reason to believe that he may abscond, or his name and address are unknown and he refuses on demand to give his name and address, or there is reason to believe that name and address given by him is incorrect, any metro railway official or police officer not below the rank of head constable, or any other person whom such metro railway official may call to his aid, may without warrant or written authority, arrest him.

Arrest of person likely to abscond or unknown.

(2) A person so arrested shall be produced before the nearest Magistrate, having authority to try him or commit him for trial, as early as possible but within a period not exceeding twenty-four hours, exclusive of the time necessary for the journey from the place of arrest to the court of the Magistrate.

84. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, no court inferior to that of a Metropolitan Magistrate shall try an offence under this Ordinance.

Magistrate having jurisdiction under the Ordinance.

Place of trial.

85. (1) Any person committing an offence under this Ordinance, or any rule or regulation made thereunder, shall be triable for such offence in any place in which he may be, or which the Government of the National Capital Territory of Delhi may notify in this behalf, as well as any other place in which he is liable to be tried under any law for the time being in force.

(2) Every notification under sub-section (1), shall be published by the Government of the National Capital Territory of Delhi in the Delhi Gazette and a copy thereof shall be exhibited for the information of the public in some conspicuous place at such metro railway stations as that Government may direct.

CHAPTER XII MISCELLANEOUS

Power of the Central Government to issue directions.

86. Without prejudice to the foregoing provisions of this Ordinance, the metro railway administration in case of the non Government metro railway shall, in the discharge of its duties and functions under this Ordinance, be bound by such directions on questions of policy as the Central Government may give in writing to it from time to time:

Provided that the metro railway administration shall, as far as practicable, be given opportunity to express its views before any direction is given under this sub-section.

Prohibition to work as Non-Government metro railway.

87. No non-Government metro railway shall work without obtaining permission from the Central Government.

Protection of action taken in good faith.

88. No suit, prosecution or other legal proceedings shall lie against the Central Government, any metro railway administration, a metro railway official or against any other person, for any thing which is in good faith done or intended to be done in pursuance of this Ordinance or any rules, regulations or orders made thereunder.

Restriction on execution against metro railway property.

89. (1) No rolling stock, metro railway tracks, machinery, plant, tools, fittings, materials or effects used or provided by a metro railway administration for the purpose of traffic on its railway, or its stations or workshops, or offices shall be liable to be taken in execution of any decree or order of any court or of any local authority or person having by law the power to attach or distrain property or otherwise to cause the property to be taken in execution, without the previous sanction of the Central Government.

(2) Nothing in sub-section (1) is to be construed as affecting the authority of any court to attach the earnings of the metro railway administration in execution of a decree or order.

Officials of metro railway administration to be public servants.

90. All persons in the employment of the metro railway administration shall, when acting or purporting to act in pursuance of the provisions of this Ordinance, be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

45 of 1860.

Procedure for delivery to the metro railway administration of property detained by a metro railway official.

91. If a metro railway official is discharged from service or is suspended, or dies or absconds or absents himself, and he or his spouse or widow or any member of his family or his representative, refuses or neglects, after notice in writing for that purpose, to deliver up to the metro railway administration or to a person appointed by the metro railway administration, in this behalf, any station, dwelling house, office or other building with its appurtenances, or any books, papers, keys, equipments or other matters, belonging to the metro railway administration and in the possession or custody of such metro railway official on the occurrence of any such event as aforesaid, any Metropolitan Magistrate may, on application made by or on behalf of the metro railway administration, order any police officer, with proper assistance, to enter upon the station, office or other building and remove any person found therein and take possession thereof, or to take possession of the books, papers and other matters, and to deliver the same to the metro railway administration or to a person appointed by the metro railway administration in that behalf.

92. (1) Entries made in the records or other documents of the metro railway administration shall be admitted in evidence in all proceedings by or against the metro railway administration, and all such entries may be proved either by the production of the records or other documents of the metro railway administration containing such entries or by the production of a copy of the entries certified by the officer having custody of the records or other documents under his signature and stating that it is a true copy of the original entries and that such original entries are contained in the records or other documents of the metro railway administration in his possession.

Proof of entries in records and documents.

(2) Notwithstanding anything contained in any other law, a court shall presume that the entries in the records of the metro railway administration admitted in evidence under sub-section (1) are true, unless there is evidence to the contrary.

93. Any notice or other document required or authorised by this Ordinance to be served on a metro railway administration may be served-

Service of notice, etc., on metro railway administration.

(a) by leaving it at the office of the metro railway administration; or

(b) by registered post to the office address of the metro railway administration.

94. Any notice or other document required or authorised by this Ordinance to be served on any person by the metro railway administration may be served by :-

Service of notice, etc., by metro railway administration.

(a) delivering it to the person; or

(b) leaving it at the usual or the last known place of abode of the person; or

(c) registered post addressed to the person at his usual or the last known place of abode.

95. Where a notice or other document is served by registered post, it shall be deemed to have been served at the time when the letter containing it would be delivered in the ordinary course of post, and in proving such service, it shall be sufficient to prove that the letter containing the notice or other document was properly addressed and registered.

Presumption where notice is served by registered post.

96. (1) The metro railway administration may, by order in writing, authorise any of its official or other person to act for, or represent it, as the case may be, in any proceeding before any civil, criminal or other court.

Representation of the metro railway administration.

(2) A person authorised under sub-section (1) to conduct prosecution on its behalf shall, notwithstanding anything in section 302 of the Code of Criminal Procedure, 1973, be entitled to conduct such prosecutions without the permission of the Magistrate.

2 of 1974.

97. The metro railway administration may constitute and maintain security staff for its railway, and the powers, duties and functions of such staff shall be such as may be prescribed.

Appointment of security staff.

98. (1) The Central Government may, by notification in the Official Gazette, direct that all or any of the powers under this Ordinance or rules made thereunder, except sections 22, 32, 47, 56, 99 and 100, exercisable by it, shall, in relation to such matters and subject to such conditions, if any, as may be specified in the notification, be exercisable also by such officer or authority subordinate to the Central Government or by such officer of the metro railway administration.

Delegation of powers.

(2) The metro railway administration may, by general or special order in writing, delegate to any of its official subject to such conditions and limitations, if any, as may be specified in the order, such of its powers and functions under this Ordinance, except its power under section 101.

99. (1) If any difficulty arises in giving effect to the provisions of this Ordinance, the Central Government may, by order, not inconsistent with the provisions of this Ordinance, remove the difficulty:

Power to remove difficulties.

Provided that no such order shall be made after the expiry of a period of two years from the commencement of this Ordinance.

(2) Every order made under this section shall be laid before each House of Parliament.

Power of the
Central
Government
to make rules:

100. (1) The Central Government may, by notification, make rules for carrying out the purposes of this Ordinance.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-

- (a) the form and time for preparing and sending annual report under section 12;
- (b) the terms and conditions of the Fare Fixation Committee under section 35;
- (c) the procedure to be followed by the Fare Fixation Committee under section 35;
- (d) the extent of compensation payable under section 57;
- (e) the powers, duties and functions of the security staff of the Government metro railway under section 97; and
- (f) without prejudice to any power to make rules contained elsewhere in this Ordinance, generally to carry-out the purposes of this Ordinance.

Power of the
metro railway
administration
to make regu-
lations.

101. The Government metro railway administration may, with the previous approval of the Central Government, make regulations not inconsistent with this Ordinance and the rules made thereunder, to provide for all matters for which provisions are necessary or expedient for the purpose of giving effect to the provisions of this Ordinance.

Rules and regu-
lations to be
laid before
Parliament.

102. Every rule made by the Central Government and every regulation made by a Government metro railway administration under this Ordinance shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule and regulation or both Houses agree that the rule or the regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.

Effect of the
Ordinance in-
consistent with
other enact-
ments.

103. The provisions of this Ordinance shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Ordinance or in any instrument having effect by virtue of any enactment other than this Ordinance.

Application
of other Acts.

104. Save as otherwise provided in this Ordinance, the provisions of this Ordinance shall be in addition to and not in derogation of the Metro Railways (Construction of Works) Act, 1978.

33 of 1978.

Sd/-

A. P. J. ABDUL KALAM,
President

Sd/-

SUBHASH C. JAIN,
Secretary to the Government of India.

By order and in the name of the Governor of Gujarat,

V. M. KOTHARE,
Secretary to Government.